TEXAS REGISTER

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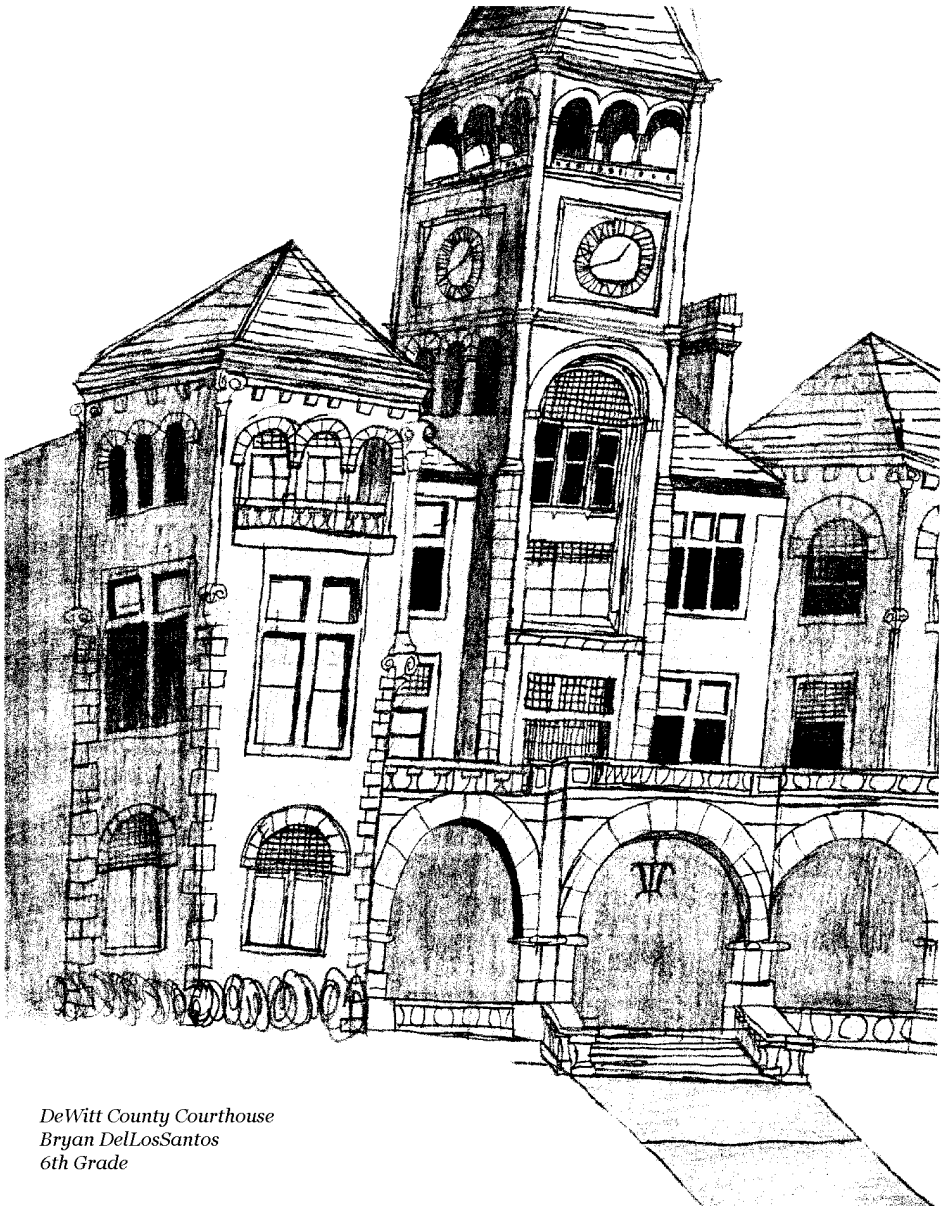

DeWitt County Courthouse
Bryan DelLosSantos
6th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for November 2, 2005

Appointed to the Texas Medical Board District Three Review Committee for a term to expire January 15, 2008, Betty Lou Angelo of Midland (pursuant to SB 419, 79th Legislature Regular Session).

Appointed to the Texas Medical Board District Four Review Committee, pursuant to SB 419, 79th Legislature, Regular Session, for a term to expire January 15, 2010, Lorna Kithil of Marble Falls.

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2010, Louie Royce Hill, M.D. of Carthage (replacing Bud Siebenlist whose term expired).

Appointed to the Texas Medical Board District One Review Committee, pursuant to SB 419, 79th Legislature, Regular Session, for a term to expire January 15, 2008, Wendy Prater Dear of Tomball.

Appointed to the Texas Medical Board District One Review Committee, pursuant to SB 419, 79th Legislature, Regular Session, for a term to expire January 15, 2010, Larry V. Buehler of Angleton.

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2011, Ann G. Pauli of El Paso (replacing Marti Morgan of Fort Worth whose term expired).

Appointed to the Texas Guaranteed Student Loan Corporation for a term to expire January 31, 2011, Yvonne Batts of Tuscola (replacing Jane Phipps of San Antonio whose term expired).

Appointed to the Texas Guaranteed Student Loan Corporation for a term to expire January 31, 2011, Frank Houston Landis of College Station (pursuant to HB 2274, 79th Legislature Regular Session).

Appointed to the Manufactured Housing Board for a term to expire January 31, 2007, Carlos Z. Amaral of Plano (replacing Clement Moreno of Spicewood who resigned).

Appointed to the Texas Commission of Licensing and Regulation for a term to expire February 1, 2011, Lewis J. Benavides of Oak Point (replacing Leopoldo Vasquez of Houston whose term expired).

Appointed to the Texas Council on Alzheimer's Disease and Related Disorders for a term to expire August 31, 2009, Ronald DeVere, M.D. of Austin (replacing Nancy Armour of Dallas whose term expired).

Appointed to the Texas Economic Development Corporation for a term at the pleasure of the Governor, Alfred B. Jones, Jr. of Corpus Christi.

Appointed to the Texas Economic Development Corporation for a term at the pleasure of the Governor, David Gordon Wallace of Sugar Land.

Appointments for November 3, 2005

Appointed to the Texas Board of Criminal Justice for a term to expire February 1, 2011, Charles Lewis Jackson of Houston (replacing William Moody of Kerrville whose term expired).

Appointed to the Texas Board of Criminal Justice for a term to expire February 1, 2011, Tom Mechler of Claude (replacing Don Jones of Midland whose term expired).

Appointed to the Texas Board of Criminal Justice for a term to expire February 1, 2011, Leopoldo R. Vasquez, III of Houston (replacing Mary Bacon of Houston whose term expired.

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2011, David Diaz of Corpus Christi (Mr. Diaz is being reappointed).

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2011, William E. King of Kemah (replacing Regina Giovannini of Houston whose term expired).

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2011, Earnest Gibson, III of Houston (Mr. Gibson is being reappointed).

Appointed as the Interstate Parole Compact Administrator for a term at the pleasure of the Governor, Katherine B. Winckler of Houston.

Rick Perry, Governor

TRD-200505189

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Executive Order

RP 49

Relating to an electric customer education choice campaign, electric conservation by state agencies, and diversity of energy supply.

WHEREAS, the State of Texas is committed to a strong and robust retail electric market where customers have their choice of providers offering the best product at the most competitive price; and

WHEREAS, it is critically important that electric customers are aware that they may enjoy the benefits of electric competition without experiencing a disruption in their electric service; and

WHEREAS, The State of Texas is committed to containing the cost expended by state agencies for energy; and

WHEREAS, production of electricity is highly dependent on the use of natural gas; and

WHEREAS, because the cost of natural gas has increased by more than 300 percent in the past five years, the cost of electricity has also increased dramatically; and

WHEREAS, due to population increases, the energy demand in the State of Texas is expected to increase 31 percent by the year 2025; and

WHEREAS, the State of Texas is blessed with vast and untapped sources of energy that can be used to diversify and stabilize the cost of energy to the people of Texas;

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, by virtue of the power and authority vested in me by the constitution and laws of the State of Texas, do hereby order the following:

Electric Customer Education Campaign. The Public Utility Commission ("PUC") shall administer a public education campaign to make customers aware of retail electric choice.

The PUC shall have the sole discretion to determine the focus of the campaign, which shall emphasize that service will remain reliable if customers switch to a competitive retail electric provider.

The Electric Customer Education Choice Campaign ("Campaign") shall begin no earlier than January 1, 2006.

The Campaign shall be funded by private dollars. The PUC shall ensure that those funds are used for the benefit of the public.

State Agency Energy Savings Program. Each state agency shall develop a plan for conserving energy and shall set a percentage goal for reducing its usage of electricity, gasoline, and natural gas.

Each state agency shall submit the energy conservation plan to the Office of the Governor and the Legislative Budget Board no later than December 1, 2005.

Each state agency shall report back to the Office of the Governor and the Legislative Budget Board with goals achieved, and ideas for additional savings on a quarterly basis. The first quarterly report shall be due no later than April 1, 2006.

Each state agency shall post its report in a conspicuous place on its internet site for public inspection.

Diversity of Energy Supply. In order to encourage diversity of energy supply, the Texas Commission on Environmental Quality ("Commission") shall apply the full resources of the agency to prioritize and expedite the processing of environmental permit applications that are protective of the public health and environment and propose to use Texas' natural resources to generate electrical power.

The Commission shall coordinate with national, state, and local agencies as needed at its discretion in order to avoid any delays in the permit issuance.

The Texas State Office of Administrative Hearings ("SOAH"), shall hold a preliminary hearing no later than one week after the required 30 day public notice for any electric generating facility that has been issued a draft permit by the Commission.

SOAH shall designate parties as provided by law and shall set a schedule that returns a proposal for decision to the Commission in no more than six consecutive months from the date of the referral.

The Commission shall require immediate notice to be provided within 48 hours of referral, including direct referral to SOAH.

The Commission shall give priority to a proposal for decision issued by SOAH as described above and shall consider this proposal for decision at its earliest agenda meeting, as allowed by law.

The Commission and SOAH are requested to explain any delays that may result in a failure to comply with this order on a monthly basis to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 27th day of October, 2005.

Rick Perry, Governor

TRD-200505257

♦ ♦ ♦

Executive Order

RP 50

Relating to the creation of an environmental flows advisory committee to address requirements for instream flows for Texas rivers and streams and requirements for freshwater inflows into Texas bay and estuary systems.

WHEREAS, Texas is blessed with abundant water resources including more than 191,000 river miles flowing through 23 major river basins, 9 major and 21 minor aquifers, 7 major estuaries, several minor estuaries, and 3,300 miles of bay and estuary lagoon shoreline; and

WHEREAS, water resources fuel economic development of the state and there is a need to provide certainty in water management and development, including its permitting, to ensure adequate water supplies are available for essential beneficial uses; and

WHEREAS, management strategies addressing environmental flow needs should be based on sound science and emphasize stakeholder involvement, public input, and consideration of local issues; further, such strategies should encourage a variety of market approaches and other voluntary measures, including voluntary land stewardship; and

WHEREAS, Section 11.0235, Texas Water Code recognizes the importance of maintaining the biological soundness of the state's rivers, lakes, bays, and estuaries to the public's economic health and general well-being, and expressly requires the Texas Commission on Environmental Quality ("Commission"), while balancing all other interests, to consider and provide for the freshwater inflows necessary to maintain the viability of the state's bay and estuary systems in the commission's regular granting of permits for the use of state waters; and

WHEREAS, the National Research Council of the National Academy of Sciences conducted a review of the State's Instream Flow Program and made important recommendations in its March 2005 report regarding the proposed State methodology and related considerations; and

WHEREAS, the Study Commission on Water for Environmental Flows ("Study Commission") established under Sec. 11.0236, Texas Water Code, which expired on September 1, 2005, laid important groundwork for establishing a method to integrate the vital issues of economic development and the protection of instream flows and freshwater inflows to bays and estuaries with specific recommendations in a December 2004 report;

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, by virtue of the power and authority vested in me by the constitution and laws of the State of Texas, do hereby order the following:

Creation of Advisory Committee. The Environmental Flows Advisory Committee ("Committee") is hereby created to examine relevant issues and make recommendations for commission action and legislation on methods for making future decisions to protect instream flows and freshwater inflows, while integrating such needs with human needs, including methods to address allocation of flows during drought conditions, using the December 2004 report of the Study Commission as a starting point.

Composition. The Committee shall consist of nine members appointed by the Governor. Three members shall be the respective presiding officers of the Texas Commission on Environmental Quality, Texas Water Development Board, and Texas Parks and Wildlife Commission with the other six members to be chosen from among river authorities;

municipalities; environmental, agricultural, industrial, and hunting and fishing interests or others with expertise in environmental flows issues; and the public.

The Governor may designate a member of the Committee to serve as chair of the Committee.

Advisory Councils and Agency Support. As the Committee deems necessary to carry out its duties, the Committee may appoint:

(A) three or four local or regional stakeholder advisory councils prioritized by basin/bay system; and

(B) a science advisory council of five members to provide technical expertise.

The commission, Texas Water Development Board, and the Texas Parks and Wildlife Department shall provide staff support for the Committee.

Recommendations and Report. The Committee shall develop recommendations to establish a process that will achieve a consensus-based, regional approach to integrate environmental flow protection with flows for human needs.

The Committee shall submit a full report, including findings and legislative recommendations, to the Governor, Lieutenant Governor, and Speaker of the House of Representatives no later then December 31, 2006. Subsequent work of the Committee may be addressed in supplementary reports as appropriate.

This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms. Unless extended, this order shall expire on September 1, 2007.

Given under my hand this the 28th day of October, 2005.

Rick Perry, Governor

TRD-200505258

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Executive Order

RP 51

Relating to the creation of a grant program to provide performance incentives to reward Texas educators.

WHEREAS, educators deserve to be compensated for their achievements and for extraordinary improvement in student academic performance; and

WHEREAS, Texas students can excel in all areas of education with the assistance of properly trained and motivated educators; and

WHEREAS, incentive programs such as the Texas Advanced Placement Incentive program have improved the number of students taking rigorous coursework and assessments and scoring at higher levels; and

WHEREAS, developing merit-based pay for educators who demonstrate an extraordinary ability to motivate students to achieve at higher levels will spur others to emulate highly successful teaching techniques; and

WHEREAS, compensating teachers for educational excellence on campuses with large numbers of economically disadvantaged students will help close the achievement gap; and

WHEREAS, the Commissioner of Education, as the education leader of the State of Texas, has authority to implement innovative programs to improve student performance; and

WHEREAS, federal law authorizes merit-based pay plans for teachers under Title II of the No Child Left Behind Act;

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, by virtue of the power and authority vested in me by the constitution and laws of the State of Texas, do hereby order the following:

Creation. The Commissioner of Education shall establish performance-based pay grant program for Texas public school educators.

Program Design. The Commissioner shall establish a grant program using federal funds and other funds made available for this purpose and shall award grants to campuses of no less than $100,000 for the purpose of rewarding educators for improving student performance. At least 75% of any grant awarded must be dedicated to compensation for classroom teachers. Grants shall be awarded based on growth in campus-level student performance according to criteria established by the Commissioner.

Grant Requirements. School districts shall apply to the Texas Education Agency to receive awards under this program in compliance with the criteria established by the Commissioner of Education. The Texas Education Agency shall set aside from funds available for this purpose no less than $10,000,000 for grants to be awarded based on incremental growth in student performance at campuses with high numbers of economically disadvantaged students.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded or superseded by me or by a succeeding Governor.

Given under my hand this the 2nd day of November, 2005.

Rick Perry, Governor

TRD-200505259

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Proclamation 41-3027

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation on September 20, 2005, as Hurricane Rita posed a threat of imminent disaster along the Texas Coast; and

WHEREAS, Hurricane Rita struck the State of Texas on September 24, 2005, causing massive destruction in Southeast Texas; and

WHEREAS, I do hereby certify that Hurricane Rita continues to create an emergency disaster and emergency conditions for the people in the State of Texas.

NOW THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.015 of the code, be implemented to meet that disaster.

As provided in Section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 20th day of October, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200505260

♦ ♦ ♦

Proclamation 41-3028

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS I, RICK PERRY, Governor of the State of Texas, issued Emergency Disaster Proclamations in the wake of Hurricane Katrina, a disaster in sister states, on September 1, 2005, and on October 3, 2005; and

WHEREAS, I do hereby certify that Hurricane Katrina continues to create an emergency disaster and emergency conditions for the people in the State of Texas, and Hurricanes Rita and Katrina continue to create a temporary housing emergency in the State of Texas; and

WHEREAS, on September 2, 2005, September 20, 2005, and October 3, 2005, I did issue Proclamations suspending the collection of all state and local hotel and motel taxes from the victims of Hurricanes Katrina and Rita;

NOW THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.015 of the code, be implemented to meet that disaster; and

As provided in Section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

FURTHER, in accordance with the Emergency Disaster Proclamations issued by me on September 1, 2005, and September 20, 2005, and with the authority vested in me by Section 418.020 of the Texas Government Code to take actions that are essential to provide temporary housing for disaster victims, I do hereby amend my prior proclamations suspending collection of the state and local hotel and motel taxes by suspending collection of the state and all local hotel and motel taxes under Texas State law including, but not limited to Chapters Sections 156, 351, 352 of the Texas Tax Code, Chapters 334, 335, and Chapter 383 of the Local Government Code, as well as any other state law authority that authorizes a local hotel occupancy tax from the victims of Hurricane Rita.

This proclamation does not extend the statutory time frame as provided for in Section 418.020 of the Texas Government Code.

This Proclamation shall be effective for a period of 30 days beginning on October 31, 2005.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 2nd day of November, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200505261

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Proclamation 41-3029

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is initiated by state or local authorities or an agent of the state or local authorities before the license is issued; and

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas defines "background check" as a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation; and

WHEREAS, the governor has received a statement of finding from the attorney general that the State of Indiana performs background checks pursuant to Indiana Code §35-47-2-3 and that those checks meet the requirements of Section 411.173(b) of the Government Code of the State of Texas; and

WHEREAS, the State of Texas is therefore authorized to recognize a valid license to carry a handgun from the State of Indiana;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to a valid license to carry a handgun issued by the State of Indiana as long as Indiana permit holders comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and types of weapons permitted.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 2nd day of November, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200505262

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0409-GA

Requestor:

The Honorable Mike Krusee

Chair, Committee on Transportation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether an individual employed as a part-time teacher at a community college may be compensated for service on the board of a municipal utility district (RQ-0409-GA)

Briefs requested by December 9, 2005

RQ-0410-GA

Requestor:

The Honorable Elizabeth Murray-Kolb

Guadalupe County Attorney

101 East Court Street, Suite 104

Seguin, Texas 78155-5779

Re: Duty to serve as a magistrate under section 2.09, Code of Criminal Procedure, and whether magistrate duties constitute a "judicial function" (RQ-0410-GA)

Briefs requested by December 9, 2005

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200505297

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: November 16, 2005

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.90, concerning Discreditable Acts.

The amendment to §501.90 will change §519.16 to §519.7 in the interpretive comment to accurately reflect the renumbering of the board rules.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the rules will be more accurate.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 27, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because there is no effect on small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.90. Discreditable Acts.

A certificate or registration holder shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

(1) - (18) (No change.)

(19) Interpretive Comment: The board has found in §519.7 [~~§519.16~~] of this title (relating to Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board) and §525.1 of this title (relating to Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, a License, or Renewal of a License for Individuals with Criminal Backgrounds) that any crime of moral turpitude directly relates to the practice of public accountancy. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 [~~§519.16~~] of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505210
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 25, 2005
For further information, please call: (512) 305-7848

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CHAPTER 511. CERTIFICATION AS A CPA
SUBCHAPTER D. CPA EXAMINATION

22 TAC §511.87

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.87, concerning Loss of Credit.

The amendment to §511.87 will delete the phrase "and this action shall be ratified by the board" in order to expedite the release of information regarding exam credit to candidates, now that such information is generated on a monthly basis.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that exam candidates will not have to wait for the board to ratify the act of notifying candidates of the status of their credit; instead, the candidates can receive this information as soon as it is received by board staff.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 27, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment creates an efficient procedure for disseminating information regarding exam credits.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.87. Loss of Credit.

(a) Any candidate having earned credit under this Act or a prior Act and who has two examinations remaining before the expiration of credits earned shall be notified prior to each examination of these facts.

(b) Any candidate failing to receive credit for all subjects within the time limitation of this Act shall be notified that credits have expired[~~, and this action shall be ratified by the board~~].

(c) The expiration of credits shall not hinder an examination candidate from reapplying for the examination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505211
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 25, 2005
For further information, please call: (512) 305-7848

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

28 TAC §1.414

The Texas Department of Insurance proposes amendments to §1.414, concerning assessment of maintenance taxes and fees for payment in the year 2006. The proposed amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2006 on the basis of gross premium receipts for calendar year 2005 or on some other statutorily designated basis. Section 1.414 proposes rates of assessment to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance, and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations; third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers. New paragraphs (5) and (6) of subsection (a) and subsection (d) are proposed as a result of the enactment of House Bill 7, enacted by Acts 2005, 79th Legislature, ch. 265, eff. Sept. 1, 2005. New paragraph (7) of

subsection (a) recognizes the addition of workers' compensation self-insurance groups which were authorized by HB 2095, enacted 2003, 78th Legislature, ch. 275, codified as Labor Code Chapter 407A.

The department will consider the proposed amendment to §1.414 in a public hearing under Docket No. 2630, scheduled for 9:30 a.m. on December 12, 2005 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Jacque Canady, Chief Financial Officer, has determined that for the first five-year period the proposal will be in effect, the anticipated fiscal impact on state government is estimated income of $106,221,189 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the proposed section, and there will be no effect on local employment or local economy.

Ms. Canady has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be facilitation in the collection of maintenance tax and fee assessments. The cost in 2006 to an insurer receiving premiums in 2005 for motor vehicle insurance will be .062 of 1% of those gross premiums; for casualty insurance, fidelity, guaranty and surety bonds, .119 of 1% of those gross premiums; for fire insurance and allied lines, including inland marine, .291 of 1% of those gross premiums; for workers' compensation insurance, .051 of 1% of those gross premiums; and for title insurance, .107 of 1% of those gross premiums. An insurer receiving premiums for workers' compensation will also pay 1.051% of that premium for the operation of the department's Division of Workers' Compensation Insurance. Workers' compensation self-insurance groups will pay 1.051% of its gross premium for a group's retention under Labor Code §407A.301 and .051 of 1% of its gross premium for a group's retention under Labor Code §407A.302. The cost in 2006 for an insurer receiving premiums in 2005 for life, health, and accident insurance, will be .040 of 1% of those gross premiums. In 2006, a health maintenance organization will pay $.51 per enrollee if it is a single service health maintenance organization or a limited service health maintenance organization, and $1.53 per enrollee if it is a multi-service health maintenance organization. In 2006, a third party administrator will pay .149 of 1% of its correctly reported gross amount of administrative or service fees received in 2005. In 2006, for a nonprofit legal services corporation issuing prepaid legal service contracts, the cost will be .044 of 1% of correctly reported gross revenues for 2005. In 2006, a workers' compensation certified self-insurer shall pay 1.051% of the tax base calculated pursuant to Labor Code §407.103(b). Except for workers' compensation certified self-insurers, there are two components of costs for entities required to comply with the proposal: the cost to gather the information, calculate the assessment and complete the required forms; and the cost of the maintenance tax or fee. Based on the information obtained by the department, the actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for the same number of lines for micro, small and large businesses. Generally, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated between $17 - $30 an hour by small and large insurers. The actual amount of time necessary to complete the form will vary depending on the number of lines of insurance written by the company. For a company that writes only one line of business subject to the tax, regardless of whether the company is micro, small, or large, the department estimates it will take two hours to complete the form. If a company writes all the lines subject to the tax, regardless of whether the company is micro, small, or large, the department estimates it will take six hours to complete the form. In the case of a certified insurer, the Division of Workers' Compensation will calculate the maintainance tax and bill the certified self-insurer. The requirement to pay the maintenance tax or fee is the result of the legislative enactment of the statutes that impose the maintenance tax or fee and is not a result of the adoption or enforcement of this proposal. There is no difference in rates of assessment proposed by the department for micro, small and large businesses. The department after considering the purpose of the authorizing statutes does not believe it is legal or feasible to waive or modify the requirements of the proposal for small and micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 26, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Jacque Canady, Chief Financial Officer, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code §§251.001, 252.001 - 252.003, 253.001 - 253.003, 254.001 - 254.003, 255.001 - 255.003, 257.001 - 257.003, 258.002 - 258.004, 259.002 - 259.004, 260.001 - 260.003, 271.002 - 271.006 and §36.001; and Labor Code §403.002, §403.003, §407.103, §407A.301, and §407A.302. Insurance Code §251.001 directs the commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code, Title 3, Subtitle C, Insurance Maintenance Taxes. Sections 252.001- 252.003 impose a maintenance tax on each authorized insurer based on the insurer's gross premiums for fire and allied lines coverage, including inland marine. Sections 253.001- 253.003 impose a maintenance tax on each authorized insurer based on the insurer's gross insurance premiums for casualty insurance and fidelity, guaranty and surety bonds coverage. Sections 254.001- 254.003 impose a maintenance tax on each authorized insurer based on the insurer's gross premiums for motor vehicle coverage. Sections 255.001- 255.003 impose a maintenance tax on each authorized insurer based on the insurer's gross premiums for workers' compensation coverage. Sections 257.001- 257.003 impose a maintenance tax on each authorized insurer based on the insurer's gross premiums collected from Texas residents for life, accident, and health coverage and the gross considerations collected for annuity and endowment contracts. Sections 258.002- 258.004 impose a per capita maintenance tax on each authorized health maintenance organization based on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Sections 259.002- 259.004 impose a maintenance tax on each authorized third-party administrator based on each administrator's correctly reported administrative or service fees. Sections 260.001- 260.003 impose a maintenance tax on each nonprofit legal services corporation based on the correctly reported gross revenues received from issuing prepaid legal services contracts in this state. Sections 271.002 - 271.006 impose a maintenance fee on each insurer's correctly reported gross premiums for writing title insurance in this state.

Labor Code §403.002 and §403.003 impose a maintenance tax on each insurer, except for a governmental entity, writing workers' compensation based on the insurer's correctly reported gross workers' compensation insurance which will pay the cost of administering the Division of Workers' Compensation, Office of Injured Employee Counsel and support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer. Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. This maintenance tax is to pay for: the administration of the Division of Workers' Compensation; the prosecution of workers' compensation insurance fraud in Texas; the research functions of the department under Labor Code Chapter 405; and the administration of the Office of Injured Employee Counsel under Labor Code Chapter 404. Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under Insurance Code §255.001 based on gross premium for the group's retention; this is to be used for the administrative costs incurred by the department in administering Labor Code, Chapter 407A. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following sections of the Insurance Code and the Labor Code are affected by this rule: Insurance Code §§251.001, 252.001 - 252.003, 253.001 - 253.003, 254.001 - 254.003, 255.001 - 255.003, 257.001 - 257.003, 258.002 - 258.004, 259.002 - 259.004, 260.001 - 260.003, 271.002 - 271.006, and Labor Code §403.002, §403.003, §407.103, §407A.301, §407A.302.

§1.414. Assessment of Maintenance Taxes and Fees, 2006 [2005].

(a) The following rates for maintenance taxes and fees are assessed on gross premiums of insurers for calendar year 2005 [2004] for the lines of insurance specified in paragraphs (1) - (8)[(5)] of this subsection:

(1) for motor vehicle insurance, pursuant to the Insurance Code §254.002 [Article 5.12], the rate is .062 [.036] of 1.0%;

(2) for casualty insurance, and fidelity, guaranty and surety bonds, pursuant to the Insurance Code §253.002 [Article 5.24], the rate is .119 [.073] of 1.0%;

(3) for fire insurance and allied lines, including inland marine, pursuant to the Insurance Code §252.002 [Article 5.49], the rate is .291 [.184] of 1.0%;

(4) for workers' compensation insurance, pursuant to the Insurance Code §255.002 [Article 5.68], the rate is .051 [.027] of 1.0%;

(5) for workers' compensation insurance, pursuant to Labor Code §403.003, the rate is 1.051%;

(6) for workers' compensation insurance, pursuant to Labor Code §407A.301, the rate is 1.051%;

(7) for workers' compensation insurance, pursuant to Labor Code §407A.302, the rate is .051 of 1%;

(8) [(5)] for title insurance, pursuant to the Insurance Code §271.004 [Article 9.46], the rate is .107 [.037] of 1.0%.

(b) The rate for the maintenance tax to be assessed on gross premiums for calendar year 2005 [2004] for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, pursuant to the Insurance Code §257.002 [Article 4.17], is .040 [.026] of 1.0%.

(c) Rates for maintenance taxes are assessed for calendar year 2005 [2004] for the following entities:

(1) pursuant to the Insurance Code §258.003 [Article 20A.33], the rate is $.51 [$.34] per enrollee for single service health maintenance organizations, $1.53 [$1.02] per enrollee for multi-service health maintenance organizations and $.51 [$.34] per enrollee for limited service health maintenance organizations;

(2) pursuant to the Insurance Code §259.003 [Article 21.07-6, §21], the rate is .149 [.125] of 1.0% of the correctly reported gross amount of administrative or service fees for third party administrators; and

(3) pursuant to the Insurance Code §260.002 [Article 23.08A], the rate is .044 [.022] of 1.0% of correctly reported gross revenues for nonprofit legal service corporations issuing prepaid legal service contracts.

(d) Pursuant to Labor Code §407.103, each certified self-insurer shall pay a self-insurer maintenance tax in calendar year 2006 at a rate of 1.051% of the tax base calculated pursuant to Labor Code §407.103(b) which shall be billed to the certified self-insurer by the Division of Workers' Compensation;

(e) The enactment of Senate Bill 14, 78th Legislature, Regular Session, relating to certain insurance rates, forms, and practices, did not affect the calculation of the maintenance tax rates or the assessment of the taxes.

(f) [(e)] The taxes assessed under subsections (a), (b), and (c) of this section shall be payable and due to the Comptroller of Public Accounts, Austin, TX 78774-0100 on March 1, 2006 [2005].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 14, 2005.

TRD-200505226
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 25, 2005
For further information, please call: (512) 463-6327

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1012

The Texas Department of Insurance proposes amendments to §7.1012, concerning assessments to cover the expenses of examining domestic and foreign insurance companies. The amendments are necessary to adjust the rates of assessment to be levied against and collected from each domestic insurance company based on admitted assets and gross premium receipts for the 2005 calendar year, and from each foreign insurance company examined during the 2006 calendar year based on

a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made. The assessments made under authority of this proposed section will be in addition to, and not in lieu of any other charge which may be made under law, including the Insurance Code Article 1.16.

The department will consider the proposed amendment to §7.1012 in a public hearing under Docket No. 2631, scheduled for 9:30 a.m. on December 12, 2005 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Jacque Canady, Chief Financial Officer, has determined that for the first five-year period the proposed amendments are in effect, the anticipated fiscal impact on state government is estimated income of $9,945,440 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy.

Ms. Canady has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the section will be adequate and reasonable assessment rates to defray the state's expenses of domestic and foreign insurer examinations and administration of the laws related to these examinations during the 2006 calendar year. Ms. Canady has determined that the direct economic cost to entities required to comply with the proposed amendments will vary. The amount of the assessment in 2006 for domestic companies will be .00299 of 1.0% of the company's admitted assets as of December 31, 2005 (excluding pension assets specified in subsection (b)(2)(A)) and .00954 of 1.0% of the company's gross premium receipts for 2005 (excluding pension related premiums specified in subsection (b)(2)(B) and premiums related to welfare benefits described in subsection (b)(5)). The amount of the assessment in 2006 for foreign companies examined in 2006 will be 34% of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals. There are two components of costs for entities required to comply with the proposal: the cost to gather the information, calculate the assessment and complete the required forms; and the cost of the assessment. Based on information obtained by the department, the actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for micro, small and large businesses. Generally, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $17 - $30 an hour. The department estimates that, regardless of whether the company is micro, small, or large, the required form can be completed in two hours. The requirement to pay the assessment necessary to cover the expenses of company examination is the result of legislative enactment and is not a result of the adoption or enforcement of this proposal. There is no difference in proposed rates of assessment for micro, small and large businesses, except that for those domestic companies with an overhead assessment of less than $25 as computed under §7.1012(b)(2)(A) a minimum overhead assessment of $25 will be assessed. The department after considering the purpose of the authorizing statutes does not believe it is legal or feasible to waive or modify the requirements of the proposal for small and micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 26, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Jacque Canady, Chief Financial Officer, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under the Insurance Code Article 1.16 and §36.001. Insurance Code Article 1.16(a) and (b) authorize the commissioner of insurance to make assessments necessary to cover the expenses of all examinations of domestic insurance companies by the department or under its authority and to cover all the expenses and disbursements necessary to comply with the provisions of the Insurance Code Articles 1.16, 1.17, and 1.18, in such amounts as the commissioner certifies to be just and reasonable. Article 1.16(f) provide that expenses incurred in the examination of foreign insurers by department examiners and other department personnel shall be collected by the commissioner by assessment. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following articles and sections of the Insurance Code are affected by this rule: Articles 1.16, 1.17, 1.17A, 1.18, 1.19, §§221.001 - 221.007, 222.001 - 222.008, and 803.007.

§7.1012. Domestic and Foreign Insurance Company Examination Assessments, 2006 [~~2005~~].

(a) Foreign insurance companies examined during the 2006 [~~2005~~] calendar year shall pay for examination expenses according to the overhead rate of assessment specified in this subsection in addition to all other payments required by law including, but not limited to, the Insurance Code Article 1.16. Each foreign insurance company examined shall pay 34% [~~33%~~] of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals. The overhead assessment will be levied with each month's billing.

(b) Domestic insurance companies shall pay according to this subsection and rates of assessment herein for examination expenses as provided in the Insurance Code Article 1.16.

(1) The actual salaries and expenses of the examiners allocable to such examination shall be paid. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 2006 [~~2005~~]. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) An overhead assessment to cover administrative departmental expenses attributable to examination of companies, which shall be paid and computed as follows:

(A) .00299 [~~.00045~~] of 1.0% of the admitted assets of the company as of December 31, 2005 [~~2004~~], upon the corporations or associations to be examined taking into consideration the annual ad-

mitted assets that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)); and

(B) .00954 [~~00128~~] of 1.0% of the gross premium receipts of the company for the year 2005 [~~2004~~], upon the corporations or associations to be examined taking into consideration the annual premium receipts that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)).

(3) If the overhead assessment, as computed under paragraph (2)(A) and (B) of this subsection, produces an overhead assessment of less than a $25 total, a minimum overhead assessment of $25 shall be levied and collected.

(4) The overhead assessments are based on the assets and premium receipts reported in the annual statements, except where there has been an understating of assets and/or premium receipts.

(5) For the purpose of applying paragraph (2)(B) of this subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of the Texas Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. §301 et seq.)

(c) The overhead assessment assessed under subsections (b)(2) and (b)(3) of this section shall be payable and due to the Texas Department of Insurance, P.O. Box 149104, MC 108-3A, Austin, Texas 78714-9104 within 30 days of the invoice date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 14, 2005.

TRD-200505227
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 25, 2005
For further information, please call: (512) 463-6327

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CHAPTER 9. TITLE INSURANCE
SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

The Texas Department of Insurance proposes an amendment to §9.1 to adopt by reference a change to the Texas Reverse Mortgage Endorsement, Form T-43, relating to home equity reverse mortgage loans, which form is contained in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual). The amendment to §9.1 updates the date of the Basic Manual to accommodate incorporation of the amended Form T-43. The 79th Legislature, Regular Session, adopted Senate Joint Resolution 7 proposing a constitutional amendment authorizing line-of-credit advances for liens securing a reverse mortgage on Texas homestead property. By voter approval on November 8, 2005, Section 50, Article XVI of the Texas Constitution was amended to authorize line-of-credit advances under a reverse mortgage loan. The amendment to endorsement form T-43 in the Basic Manual is necessary to facilitate the issuing of mortgagee title policies insuring home equity liens on homestead property. The proposed modification to the existing title insurance form relating to home equity reverse mortgages refers to the correct and applicable law contained in the constitutional amendment as authorized by Texas voters and sets forth the scope and limitations of the insurance coverage of this form. The proposed amended endorsement will facilitate title insurance companies writing title insurance coverage regarding home equity reverse mortgage lending in Texas. The department has filed a copy of the proposed amended form with the Secretary of State's Texas Register section. The proposed amended form is available from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104. To request a copy, please contact Sylvia Gutierrez at 512/463-6327.

Robert R. Carter, Jr., deputy commissioner for the title division, has determined that, for each year of the first five years the amendment is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the amendment. Mr. Carter has also determined that there will be no measurable effect on local employment or the local economy.

Mr. Carter has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering and enforcing the amendment will be to ensure the appropriate policy and endorsement language on title insurance policies covering home equity reverse mortgage loans. The department expects the public to benefit from the introduction of line-of-credit advances under reverse mortgage loans, which is likely to facilitate the continued availability of mortgage loan funds in the State of Texas. Both Texas homeowners and lenders will benefit from a strong secondary market for Texas home equity loans, thus potentially increasing mortgage lending in Texas. The department expects the current premium rates for these existing endorsements to fully cover the costs of producing the amended endorsement. The sale of such endorsements is voluntary and imposes no additional regulatory costs on companies that decide to participate in the market. Additionally, the department anticipates that the premium schedules will fully compensate small, large, and micro-businesses, and therefore, expects no differential impact between small, large, and micro-businesses that decide to participate in such sales. The cost per hour of labor should not vary between small, large, and micro-businesses. Further, it is neither legal nor feasible to exempt small or micro-businesses or to waive compliance considering the purpose of the constitutional amendment, which authorizes line-of-credit advances under a reverse mortgage, and the purpose of the proposed amendment to the Texas Reverse Mortgage Endorsement, Form T-43, which is to ensure the appropriate policy and endorsement language on title insurance policies covering home equity reverse mortgage loans.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 26, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 1132A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Robert R. Carter, Jr.,

Deputy Commissioner, Title Division, Mail Code 106-2T, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing should be submitted separately to the Chief Clerk's office.

The amended section is proposed pursuant to the Insurance Code, §2551.003, Chapter 2703, and 36.001, and Section 50, Article XVI of the Texas Constitution. Chapter 2703 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Section 2551.003 authorizes the commissioner to promulgate and enforce rules prescribing underwriting standards and practices, and to promulgate and enforce all other rules necessary to accomplish the purposes of Title 11, concerning regulation of title insurance. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state. By voter approval on November 8, 2005, Section 50, Article XVI of the Texas Constitution was amended to provide for home equity line-of-credit advances on reverse mortgages.

The following statutes are affected by this proposal: Insurance Code, §2551.003 and Chapter 2703

§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas as amended effective January 20, 2006 [~~November 1, 2005~~]. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-1998.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 14, 2005.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 25, 2005
For further information, please call: (512) 463-6327

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CHAPTER 25. INSURANCE PREMIUM FINANCE

SUBCHAPTER E. EXAMINATIONS AND ANNUAL REPORTS

28 TAC §25.88

The Texas Department of Insurance proposes an amendment to §25.88 concerning an assessment which will be used to cover the general administrative expenses of the department's regulation of insurance premium finance companies. The amendment is necessary to adjust the rate of assessment to ensure that there are sufficient funds to meet the expenses of performing the department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under §25.88, the department levies a rate of assessment to cover the department's general administrative expenses for fiscal year 2006 and collects the assessment from each insurance premium finance company on the basis of a percentage of the company's total loan dollar volume for the 2005 calendar year.

The department will consider the proposed amendment to §25.88 in a public hearing under Docket No. 2632, scheduled for 9:30 a.m. on December 12, 2005 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Jacque Canady, Chief Financial Officer, has determined that for the first five-year period the proposal is in effect, the anticipated fiscal impact on state government will be income estimated at $153,126 to the state's general revenue fund. There is no fiscal implication for local government or employment or the local economy as a result of enforcing or administering the proposal.

Ms. Canady has determined that for each year of the first five years the proposed amended section is in effect, the public benefit anticipated as a result of enforcing the section will be sufficient funds to cover the department's expenses for regulating insurance premium finance companies. There are two components of costs for entities required to comply with the proposal: the cost to gather the information, calculate the assessment and complete the required forms; and the cost of the assessment. Based on information obtained by the department, the actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for micro, small and large businesses. Generally, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by micro, small and large insurance premium finance companies. The compensation is generally between $17 - $30 an hour. The department estimates that, regardless of whether the company is micro, small, or large, the required form can be completed in two hours. The requirement to pay the assessment is the result of the legislative enactment of the statute that imposes the assessment and is not a result of the adoption or enforcement of this proposal. There is no difference in proposed rates of assessment for micro, small and large businesses. The cost of the assessment to a premium finance company in 2006, regardless of whether the company is micro, small, or large, will be .00337 of 1.0% of calendar year 2005 total loan dollar volume of the insurance premium finance company. The minimum assessment cost under the section is $250. The department, after considering the purpose of the authorizing statute, does not believe it is legal or feasible to waive or modify the statutorily mandated requirements of the proposal for small and micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 26, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Jacque Canady, Chief Financial Officer, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code §§651.003, 651.006(a)(2), and 36.001. Section 651.003 authorizes the commissioner to adopt and enforce rules necessary to

carry out the provisions of the Insurance Code, Title 5, Chapter 651, concerning the regulation of insurance premium finance companies. Section 651.006 requires each insurance premium finance company licensed by the department to pay an amount imposed by the department to cover the direct and indirect costs of examinations and investigations and a proportionate share of general administrative expenses attributable to regulation of insurance premium finance companies. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Insurance Code §§651.003, 651.006(a)(2), 651.101, 651.102, 651.204, 651.208, and 651.209 are affected by this section.

§25.88. General Administrative Expense Assessment.

On or before April 1, 2006 [~~2005~~], each insurance premium finance company holding a license issued by the department under the Insurance Code, Chapter 651 [~~24~~], shall pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. Payment shall be sent to the Texas Department of Insurance, Examinations Division, Mail Code #305-2E, 333 Guadalupe, P. O. Box 149104, Austin, Texas 78701-9104. The assessment to cover general administrative expenses shall be computed and paid as follows.

(1) The amount of the assessment shall be computed as .00337 [~~.00154~~] of 1.0% of the total loan dollar volume of the company for calendar year 2005 [~~2004~~].

(2) If the amount of the assessment computed under paragraph (1) of this section is less than $250, the amount of the assessment shall be $250.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 14, 2005.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

SUBCHAPTER F. ACTION BY THE COMMISSION

30 TAC §50.113

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §50.113.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under the proposed rule, the eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings. Other portions of HB 2201 reflected in the proposed rule define relevant terms, establish an emissions profile, and clarify jurisdiction issues between TCEQ and the Railroad Commission of Texas. Much of the content of the proposed rule originates from new Texas Health and Safety Code (THSC), §382.0565, Clean Coal Project Permitting Procedure, and new Texas Water Code (TWC), §5.558 and §27.022, which were created by HB 2201.

The purpose of the proposed amendment to Chapter 50 is to implement the requirements of HB 2201 with respect to a streamlined permitting process for applications required to authorize a component of the FutureGen project. Because HB 2201 eliminates contested case hearings on applications for permits required to authorize a component of the FutureGen project, the proposed amendment to §50.113 allows the commission to act on an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project without holding a contested case hearing. The proposed §50.113 does not include an expiration date or sunset date, but the commission specifically requests comment on whether an expiration date or sunset date is necessary.

Corresponding rulemakings are published in this issue of the *Texas Register* that include changes to 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities; 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and 30 TAC Chapter 331, Underground Injection Control.

SECTION DISCUSSION

§50.113, Applicability and Action on Application.

The proposed amendment would add a new subsection (d)(5) stating that the commission may act on an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30, Definitions, without holding a contested case hearing. Concurrently, proposed new Chapter 91, provides the streamlined permitting process for applications for a permit, registration, license, or other type of authorization

required to construct, operate, or authorize a component of the FutureGen.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period that the proposed amendment is in effect, no fiscal implications are anticipated for the agency or other units of state or local government. Any entities wishing to be permitted under the proposed rule may experience some cost savings due to a streamlined permitting process.

The proposed rule implements HB 2201. HB 2201 directs the agency to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. The legislature determined that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and determined that streamlining the permitting process for FutureGen projects would serve the public interest by improving the state's ability to compete for federal funding for FutureGen projects.

At this time, there have been no permits issued by the agency for FutureGen projects. It is anticipated that there may be one entity in the state that may apply for such a permit in the future. As the proposed rule would eliminate the contested case hearing process for specific projects and does not impose any new requirements for the agency, there may be minor cost savings to TCEQ and the State Office of Administrative Hearings due to the reduction in the number of contested case hearings.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed amendment is in effect, the public benefit anticipated from the changes due to the proposed rule will be compliance with state law and improving the state's ability to compete for federal funding for FutureGen projects. These projects are anticipated to result in the development of cleaner sources of power to meet energy demands.

The proposed rule may result in some reduced costs for eligible industry projects, but in general any cost savings are not expected to be significant.

The proposed rule is expected to only apply to one project at the current time. The project involves a variety of equipment used for power generation, hydrogen production, and carbon dioxide sequestration. This equipment may include bulk fuel handling equipment, gasifiers, reactors, separators, turbines, sulfur recovery units, and emission control equipment. Industry projects eligible for the proposed rule would no longer be subject to a contested case hearing.

The elimination of contested case hearings may reduce travel costs for applicants, and may result in reduced administrative or professional costs that would have been incurred by the applicant to prepare for a contested case hearing.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Small or micro-businesses are not expected to apply for permits for FutureGen projects, but if they do, they would experience the same cost savings as large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule is intended to establish procedural requirements for authorizing certain types of projects required for the FutureGen project without holding a contested case hearing. The proposed rule is only a procedural rule for processing applications for permits for the FutureGen project and is not specifically intended to protect the environment or to reduce risks to human health. The proposed rule is intended to provide an alternative mechanism for public participation and does not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225, definition of "major environmental rule."

Furthermore, the proposed rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rule does not meet any of these applicability requirements. First, the proposed rule is consistent with, and does not exceed, the standards set by federal law. Second, the proposed rule does not exceed an express requirement of state law, instead the rule implements HB 2201. Third, the rule does not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not propose the rule solely under the general powers of the agency, but rather under the authority of THSC, §382,0565, as added by HB 2201, which directs the commission to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; TWC, §5.558, as amended by HB 2201, which directs the

commission to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the injection of carbon dioxide produced by a clean coal project to the extent authorized by federal law.

Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether this rulemaking would constitute a takings under Texas Government Code, Chapter 2007. The proposed rule is intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The proposed rule is only a procedural rule establishing a system to administer the program for permitting FutureGen projects and is not specifically intended to protect the environment or to reduce risks to human health. The proposed rule is intended to provide an alternative mechanism for public participation and does not alter the underlying technical review requirements. Promulgation and enforcement of the rule will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rule also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the proposed rule will not constitute a takings under Texas Government Code, Chapter 2007. The commission invites public comment on this preliminary takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed revision includes procedural mechanisms to authorize new sources of air contaminants; however, the proposed revision does not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies. The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

FutureGen projects may or may not be subject to the federal operating permits program depending on the quantity and type of their emissions and their location. If subject, facilities will be required to meet all requirements of the Federal Operating Permits Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 20, 2005, at 10:00 a.m. in Building B, Room 201A, at the TCEQ's complex, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-053-091-PR. The proposed rules may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. Comments must be received by 5:00 p.m., December 27, 2005. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.0518, concerning preconstruction permits; THSC, §382.056, concerning notice of intent to obtain permit or permit review and hearing; THSC, §382.0565,

concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The proposed amendment implements TWC, §5.558(c) and THSC, §382.0565(d).

§50.113. Applicability and Action on Application.

(a) - (c) (No change.)

(d) Without holding a contested case hearing, the commission may act on:

(1) - (5) (No change.)

(6) an application for pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration); [~~and~~]

(7) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions); and

(8) [~~(7)~~] other types of applications where a contested case hearing request has been filed but no opportunity for hearing is provided by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2005.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 25, 2005
For further information, please call: (512) 239-5017

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.201

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §55.201.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under this proposed rulemaking, the eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings. Other portions of HB 2201 reflected in the proposed rule define relevant terms, establish an emissions profile, and clarify jurisdiction issues between TCEQ and the Railroad Commission of Texas. Much of the content of the proposed rule originates from new Texas Health and Safety Code (THSC), §382.0565, Clean Coal Project Permitting Procedure, and new Texas Water Code (TWC), §5.558 and §27.022, which were created by HB 2201.

The purpose of the proposed amendment to Chapter 55 is to implement the requirements of HB 2201, with respect to a streamlined permitting process for applications required to authorize a component of the FutureGen project. Because HB 2201 eliminates contested case hearings on applications for permits required to authorize a component of the FutureGen project, the proposed amendment to §55.201 adds applications for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as type of application for which there is no right to a contested case hearing under commission rule. The proposed §55.201 does not include an expiration date or sunset date, but the commission specifically requests comment on whether an expiration date or sunset date is necessary.

Corresponding rulemakings are published in this issue of the *Texas Register* that include changes to 30 TAC Chapter 50, Action on Applications and Other Authorizations; 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities; 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and 30 TAC Chapter 331, Underground Injection Control.

SECTION DISCUSSION

§55.201, Requests for Reconsideration or Contested Case Hearing.

The proposed amendment would add subsection (i)(8) stating that there is no right to a contested case hearing on an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30, Definitions. The concurrently proposed new Chapter 91, provides the streamlined permitting process for applications for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period the proposed amendment is in effect, no fiscal implications are anticipated for the agency or other units of state or local government. Any entities wishing to be permitted under the proposed rule may experience some cost savings due to a streamlined permitting process.

The proposed rule implements HB 2201. HB 2201 directs the agency to establish by rule, streamlined permitting procedures

for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. The legislature determined that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and determined that streamlining the permitting process for FutureGen projects would serve the public interest by improving the state's ability to compete for federal funding for FutureGen projects.

At this time, there have been no permits issued by the agency for FutureGen projects. It is anticipated that there may be one entity in the state that may apply for such a permit in the future. As the proposed rule would eliminate the contested case hearing process for specific projects and does not impose any new requirements for the agency, there may be minor cost savings to TCEQ and the State Office of Administrative Hearings due to the reduction in the number of contested case hearings.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed rule is in effect, the public benefit anticipated from the changes due to the proposed rule will be compliance with state law and improving the state's ability to compete for federal funding for FutureGen projects. These projects are anticipated to result in the development of cleaner sources of power to meet energy demands.

The proposed rule may result in some reduced costs for eligible industry projects, but in general any cost savings are not expected to be significant.

The proposed rule is expected to only apply to one project at the current time. The project involves a variety of equipment used for power generation, hydrogen production, and carbon dioxide sequestration. This equipment may include bulk fuel handling equipment, gasifiers, reactors, separators, turbines, sulfur recovery units, and emission control equipment. Industry projects eligible for the proposed rule would no longer be subject to a contested case hearing.

The elimination of contested case hearings may reduce travel costs for applicants, and may result in reduced administrative or professional costs that would have been incurred by the applicant to prepare for a contested case hearing.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Small or micro-businesses are not expected to apply for permits for FutureGen projects, but if they do, they would experience the same cost savings as large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule is intended to establish procedural requirements for authorizing certain types of projects required for the FutureGen project without holding a contested case hearing. The proposed rule is only a procedural rule for processing applications for permits for the FutureGen project and is not specifically intended to protect the environment or to reduce risks to human health. The proposed rule is intended to provide an alternative mechanism for public participation and does not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225 definition of "major environmental rule."

Furthermore, the proposed rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rule does not meet any of these applicability requirements. First, the proposed rule is consistent with, and does not exceed, the standards set by federal law. Second, the proposed rule does not exceed an express requirement of state law, instead the rule implements HB 2201. Third, the rule does not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not propose the rule solely under the general powers of the agency, but rather under the authority of THSC, §382,0565, as added by HB 2201, which directs the commission to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; TWC, §5.558, as amended by HB 2201, which directs the commission to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the injection of carbon dioxide produced by a clean coal project to the extent authorized by federal law.

Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether this rulemaking would constitute a takings under Texas Government Code,

Chapter 2007. The proposed rule is intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The proposed rule is only a procedural rule establishing a system to administer the program for permitting FutureGen projects and is not specifically intended to protect the environment or to reduce risks to human health. The proposed rule is intended to provide an alternative mechanism for public participation and does not alter the underlying technical review requirements. Promulgation and enforcement of the rule will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rule also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the proposed rule will not constitute a takings under Texas Government Code, Chapter 2007. The commission invites public comment on this preliminary takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed revision includes procedural mechanisms to authorize new sources of air contaminants; however, the proposed revision does not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies. The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

FutureGen projects may or may not be subject to the federal operating permits program depending on the quantity and type of their emissions and their location. If subject, facilities will be required to meet all requirements of the Federal Operating Permits Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 20, 2005, at 10:00 a.m. in Building B, Room 201A, at the TCEQ's complex, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-053-091-PR. The proposed rule may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. Comments must be received by 5:00 p.m., December 27, 2005. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.0518, concerning preconstruction permits; THSC, §382.056, concerning notice of intent to obtain permit or permit review and hearing; THSC, §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The proposed amendment implements TWC, §5.558(c) and THSC, §382.0565(d).

§55.201. Requests for Reconsideration or Contested Case Hearing.

(a) - (h) (No change.)

(i) Applications for which there is no right to a contested case hearing include:

(1) - (6) (No change.)

(7) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-injection Units Registration); [~~and~~]

(8) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions); and

(9) [~~(8)~~] other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2005.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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CHAPTER 91. ALTERNATIVE PUBLIC NOTICE AND PUBLIC PARTICIPATION REQUIREMENTS FOR SPECIFIC DESIGNATED FACILITIES

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §§91.10, 91.20, 91.30, 91.100, 91.110, and 91.120.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under these proposed rules, the eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings. Other portions of HB 2201 reflected in the proposed rules define relevant terms, establish an emissions profile, and clarify jurisdiction issues between TCEQ and the Railroad Commission of Texas. Much of the content of the proposed rules originates from new Texas Health and Safety Code (THSC), §382.0565, Clean Coal Project Permitting Procedure, and new Texas Water Code (TWC), §5.558 and §27.022, which were created by HB 2201.

Proposed Chapter 91 establishes procedural requirements only. Chapter 91 provides the streamlined processes for issuing permits, registrations, licenses, or other types of authorization under the commission's jurisdiction required to construct, operate, or authorize a component of the FutureGen project. Applications subject to the streamlined permitting process are still subject to the same technical requirements that apply to the type of authorization sought. The commission is required to adopt rules implementing the provisions of HB 2201 not later than September 1, 2006.

The proposed Chapter 91 does not include an expiration date or sunset date, but the commission specifically requests comment on whether an expiration date or sunset date is necessary.

Corresponding rulemakings are published in this issue of the *Texas Register* that include changes to 30 TAC Chapter 50, Action on Applications and Other Authorizations; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and 30 TAC Chapter 331, Underground Injection Control.

SECTION BY SECTION DISCUSSION

SUBCHAPTER A: PURPOSE AND APPLICABILITY

§91.10, Purpose

The commission proposes this new section to state the purpose of this new chapter. The chapter is intended to establish streamlined permitting processes for the commission to issue permits, registrations, licenses, or other types of authorization required to construct, operate, or authorize a component of the FutureGen project.

§91.20, Applicability

The commission proposes this new section to specify the applicability of Chapter 91. Proposed subsection (a) provides that the chapter applies procedural requirements for authorizations required to construct, operate, or authorize a component of the FutureGen project as defined under §91.30, Definitions, including applications for permits, registrations, licenses, or other types of authorization. Proposed subsection (b) explains that the applications subject to the Chapter 91 procedures are subject to the technical requirements that apply to the type of authorization sought. Proposed subsection (c) provides that the chapter does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal based on TWC, §5.558(d). Proposed subsection (d) is intended to encompass, under Chapter 91, any type of application under the commission's jurisdiction that may be required for authorizing a component of the FutureGen project whether or not the type of authorization is specifically identified in the chapter. Proposed subsection (e) provides that if the executive director determines that an application is not subject to the requirements of the chapter, the application will be subject to procedural requirements that would otherwise apply to the type of authorization sought. Proposed subsection (f) provides that an applicant may appeal a determination by the executive director that Chapter 91 does not apply to a particular application by filing a motion under §50.139, Motion to Overturn Executive Director's Decision.

§91.30, Definitions

The commission proposes definitions for several terms used in the chapter, including a definition for clean coal project, coal, Fu-

tureGen project, component of the FutureGen project, and FutureGen project profile. The definitions for these terms originate from TWC, §5.001 and other provisions of HB 2201.

SUBCHAPTER B: PUBLIC NOTICE AND PUBLIC PARTICIPATION

§91.100, Contested Case Hearings

The commission proposes this new section to state that an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30, is not subject to a contested case hearing. This implements the requirement of TWC, §5.558(c).

§91.110, Public Notice

The commission proposes this new section to require the same public notice procedures that would otherwise apply to a particular application, for most types of commission permits, except to modify the text of the notice to indicate that the application is not subject to a contested case hearing. Proposed subsection (a) provides that an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30, is subject to the applicable notice requirements under Chapter 39 or other rule under this title for the type of authorization sought, except as provided in this section. Proposed subsection (b) provides that the text of the notice must include the following statements: "The application is for authorization of a component of the FutureGen project and is not subject to a contested case hearing. The commission may hold a public meeting, an informal conference, or form an advisory committee to gather the opinions and advice of interested persons on the application when there is a significant degree of public interest." Proposed subsection (c) provides that the text of the notice must not include a description of procedures for requesting a contested case hearing or the deadline for requesting a contested case hearing.

§91.120, Public Participation

The commission proposes this new section that would state, except for contested case hearings, an application subject to the streamlined process in Chapter 91 is subject to the same public participation requirements, such as public notice, public meeting opportunities, and public commenting, that would otherwise apply to the application, for most types of commission applications. In addition, the commission may conduct public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons on an application. Proposed subsection (a) provides that the commission may hold public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons on an application subject to this chapter when there is a significant degree of public interest. This implements the requirement of TWC, §5.558(b). Proposed subsection (b) provides that except as provided in §91.100, which provides that these applications are not subject to a contested case hearing, an application under this chapter is also subject to the public meeting and public comment processing requirements in Chapter 55 or elsewhere under this title applicable to the type of authorization sought.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period the proposed new sections are in effect, no fiscal implications are anticipated for the agency or other units of state or local government. Any entities wishing to be permitted under the proposed rules may experience some cost savings due to a streamlined permitting process.

The proposed rules implement HB 2201. HB 2201 directs the agency to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. The legislature determined that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and determined that streamlining the permitting process for FutureGen projects would serve the public interest by improving the state's ability to compete for federal funding for FutureGen projects.

At this time, there have been no permits issued by the agency for FutureGen projects. It is anticipated that there may be one entity in the state that may apply for such a permit in the future. As the proposed rules would eliminate the contested case hearing process for specific projects and not impose any new requirements for the agency, there may be minor cost savings to TCEQ and the State Office of Administrative Hearings due to the reduction in the number of contested case hearings.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed new rules are in effect, the public benefit anticipated from the changes due to the proposed rules will be compliance with state law and improving the state's ability to compete for federal funding for FutureGen projects. These projects are anticipated to result in the development of cleaner sources of power to meet energy demands.

The proposed rules may result in some reduced costs for eligible industry projects, but in general any cost savings are not expected to be significant.

The proposed rules are expected to only apply to one project at the current time. The project involves a variety of equipment used for power generation, hydrogen production, and carbon dioxide sequestration. This equipment may include bulk fuel handling equipment, gasifiers, reactors, separators, turbines, sulfur recovery units, and emission control equipment. Industry projects eligible for the proposed rules would no longer be subject to a contested case hearing. Instead, these projects would be subject to a notice and comment hearing process.

The elimination of contested case hearings may reduce travel costs for applicants, and may result in reduced administrative or professional costs that would have been incurred by the applicant to prepare for a contested case hearing.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Small or micro-businesses are not expected to apply for permits for FutureGen projects, but if they do, they would experience the same cost savings as large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required

because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules are intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The proposed rules are only procedural rules establishing a system to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The proposed rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225 definition of "major environmental rule."

Furthermore, the proposed rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these applicability requirements. First, the proposed rules are consistent with, and do not exceed, the standards set by federal law. Second, the proposed rules do not exceed an express requirement of state law, instead these rules implement HB 2201. Third, the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not propose these rules solely under the general powers of the agency, but rather under the authority of THSC, §382,0565, as added by HB 2201, which directs the commission to by rule implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; TWC, §5.558, as amended by HB 2201, which directs the commission to by rule implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the injection of carbon dioxide produced by a clean coal project to the extent authorized by federal law.

Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether this action would constitute a takings under Texas Government Code, Chapter 2007. The proposed rules are intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The proposed rules are only procedural rules establishing a system to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The proposed rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the proposed rules will not constitute a takings under Texas Government Code, Chapter 2007. The commission invites public comment on this preliminary takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed revisions include procedural mechanisms to authorize new sources of air contaminants; however, the proposed revisions do not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies. The commission solicits

comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 20, 2005, at 10:00 a.m. in Building B, Room 201A, at the TCEQ's complex, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-053-091-PR. The proposed rules may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. Comments must be received by 5:00 p.m., December 27, 2005. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

SUBCHAPTER A. PURPOSE AND APPLICABILITY

30 TAC §§91.10, 91.20, 91.30

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0518, concerning preconstruction permits; §382.056, concerning notice of intent to obtain permit or permit review and hearing; §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The proposed new sections implement TWC, §5.558(c) and THSC, §382.0565(d).

§91.10. Purpose.

The purpose of this subchapter is to establish streamlined processes under Texas Water Code, §5.558, for the commission to issue permits, registrations, licenses, or other types of authorization under the commission's jurisdiction required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions).

§91.20. Applicability.

(a) This subchapter applies to procedural requirements for authorizations required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), including applications for permits, registrations, licenses, or other types of authorization under the following:

(1) Chapter 295 (relating to Water Rights, Procedural);

(2) Chapter 297 (relating to Water Rights, Substantive);

(3) Chapter 305 (relating to Consolidated Permits);

(4) Chapter 312 (relating to Sludge Use, Disposal, and Transportation);

(5) Chapter 329 (relating to Drilled or Mine Shafts);

(6) Chapter 330 (relating to Municipal Solid Waste);

(7) Chapter 331 (relating to Underground Injection Control);

(8) Chapter 335 (relating to Industrial Solid Waste and Municipal Solid Waste); and

(9) Chapter 336 (relating to Radioactive Substance Rules).

(b) Applications for permits, registrations, licenses, or other types of authorization required to construct, operate, or authorize a component of the FutureGen project as defined under §91.30 of this title are subject to the technical requirements under the commission program, rule, or statute that the application is sought.

(c) This subchapter does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

(d) The executive director may apply the requirements of this subchapter to any application not otherwise specified in this subchapter for which the executive director determines constitutes a bona fide component of the FutureGen project.

(e) If the executive director determines that an application is not subject to the applicability of this subchapter, the application will be subject to the permitting and public participation process that would otherwise apply to the type of authorization sought.

(f) An applicant may appeal a determination by the executive director under subsection (e) of this section, by filing a motion under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

(g) Applications for authorization submitted under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) shall be subject to the public notice and participation procedures stated in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), and any applicable rules in Chapters 39 and 55 of this title (relating to Public Notice, and Requests for Reconsideration and Contested Case Hearings; Public Comment).

§91.30. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Clean coal project--The installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project.

The term includes the construction or modification of a facility for electric generation, industrial production, or the production of steam as a by-product of coal gasification to the extent that the facility installs one or more components of the FutureGen project.

(2) Coal--All forms of coal, including lignite.

(3) FutureGen project--A common reference to the coal-based integrated sequestration and hydrogen project to be built in partnership with the United States Department of Energy.

(4) Component of the FutureGen project--A process, technology, or piece of equipment that:

(A) is designed to employ coal gasification technology to generate electricity, hydrogen, or steam in a manner that meets the FutureGen project profile;

(B) is designed to employ fuel cells to generate electricity in a manner that meets the FutureGen project profile;

(C) is designed to employ a hydrogen-fueled turbine to generate electricity where the hydrogen is derived from coal in a manner that meets the FutureGen project profile;

(D) is designed to demonstrate the efficacy at an electric generation or industrial production facility of a carbon dioxide capture technology in a manner that meets the FutureGen project profile;

(E) is designed to sequester a portion of the carbon dioxide captured from an electric generation or industrial production facility in a manner that meets the FutureGen project profile in conjunction with appropriate remediation plans and appropriate techniques for reservoir characterization, injection control, and monitoring;

(F) is designed to sequester carbon dioxide as part of enhanced oil recovery in a manner that meets the FutureGen project profile in conjunction with appropriate techniques for reservoir characterization, injection control, and monitoring;

(G) qualifies for federal funds designated for the FutureGen project;

(H) is required to perform the sampling, analysis, or research necessary to submit a proposal to the United States Department of Energy for the FutureGen project; or

(I) is required in a final United States Department of Energy request for proposals for the FutureGen project or is described in a final United States Department of Energy request for proposals as a desirable element to be considered in the awarding of the project.

(5) FutureGen project profile--A standard or standards relevant to a component of the FutureGen project, as provided in a final or amended United States Department of Energy request for proposals or contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505203
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 25, 2005
For further information, please call: (512) 239-5017

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SUBCHAPTER B. PUBLIC NOTICE AND PUBLIC PARTICIPATION

30 TAC §§91.100, 91.110, 91.120

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0518, concerning preconstruction permits; §382.056, concerning notice of intent to obtain permit or permit review and hearing; §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The proposed new sections implement TWC, §5.558(c) and THSC, §382.0565(d).

§91.100. Contested Case Hearings.

With the exception of any other provision in this title, an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions) is not subject to a contested case hearing.

§91.110. Public Notice.

(a) An application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions) is subject to the applicable notice requirements under Chapter 39 of this title (relating to Public Notice) or other rule under this title for the type of authorization sought, except as provided in this section.

(b) The text of the notice must include the following statements: "The application is for authorization of a component of the FutureGen project and is not subject to a contested case hearing. The commission may hold a public meeting, an informal conference, or form an advisory committee to gather the opinions and advice of interested persons on the application when there is a significant degree of public interest."

(c) The text of the notice must not include a description of procedures for requesting a contested case hearing or the deadline for requesting a contested case hearing.

§91.120. Public Participation.

(a) The commission may hold public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons on an application subject to this chapter when there is a significant degree of public interest.

(b) Except as provided in §91.100 of this title (relating to Contested Case Hearings), an application under this chapter is also sub-

ject to the public meeting and public comment processing requirements of Chapter 55 of this title (relating to Public Notice and Requests for Reconsideration and Contested Case Hearings; Public Comment) or elsewhere under this title that is applicable to the type of authorization sought.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505204
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 25, 2005
For further information, please call: (512) 239-5017

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CHAPTER 111. CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER

SUBCHAPTER A. VISIBLE EMISSIONS AND PARTICULATE MATTER

DIVISION 5. EMISSIONS LIMITS ON NONAGRICULTURAL PROCESSES

30 TAC §111.155

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Environmental Quality (commission) proposes the repeal of §111.155 and a corresponding revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEAL

The Texas Air Control Board (TACB) first developed and adopted ambient air standards for particulate matter (PM) in 1967. These standards were described in Regulation I, Board Order 67-1. The impetus for the standards was the results from field sampling surveys conducted in several regions of the state that suggested that PM control was necessary. At the time, the sampling method typically used for ambient PM was high-volume sampling. High-volume samplers collected the PM size fraction generally referred to as total suspended particulate matter (TSP). TSP does not have a clearly defined upper PM size cutoff, but is commonly recognized as PM that is 25 - 40 micrometers in diameter and smaller. It is important to note that in 1967 there were no national ambient air quality standards (NAAQS) for PM.

In 1971, primary (human health-based) and secondary (welfare-based) NAAQS were promulgated for PM, with TSP serving as the PM indicator. Following the establishment of the PM NAAQS, the TACB significantly revised the state ambient air standards for PM in 1972. The revised standards established net ground-level concentrations in ambient air for PM of 100, 200, and 400 micrograms per cubic meter (µg/m^3) (averaged over any five-, three-, and one-hour periods). Though not explicitly stated, the PM indicator for the standards was TSP, given the existing sampling technology at that time.

The 1972 Texas PM standards were reviewed and slightly modified in 1989, with the five-hour standard removed and the one- and three-hour standards readopted, resulting in the current PM standards listed in §111.155. Section 111.155 establishes net ground-level concentrations in ambient air for PM of 200 and 400 µg/m^3, averaged over any three- and one- hour periods, respectively. These concentrations were originally adopted by the commission in 1972. As noted previously, the PM indicator for §111.155 effectively remained TSP. On the national level, the 1971 PM NAAQS were modified in 1987, with particulate matter ten micrometers or smaller in diameter (PM_{10}) replacing TSP as the PM indicator and new primary and secondary NAAQS established. The rationale for replacing TSP with PM_{10} relates to the significant amount of scientific progress made since the promulgation on the 1971 PM NAAQS. This progress occurred in numerous facets of PM research, ranging from monitoring technology (sampling and analysis), atmospheric chemistry, emissions sources, and health effects.

The PM NAAQS were revised again in 1997, with the retention of PM_{10} serving as an indicator for coarse PM, and the establishment of a new, additional PM indicator, particulate matter 2.5 micrometers or smaller in diameter ($PM_{2.5}$). This new indicator was selected to address fine PM based on the emerging science that PM smaller than PM_{10} was more strongly associated with premature mortality and severe morbidity. Current PM NAAQS (PM_{10} and $PM_{2.5}$ NAAQS established in 1997) are under review and may be revised.

Section 111.155 was originally cited in the Texas SIP adopted in 1972 and in subsequent revisions adopted in 1973, 1974, 1975, and 1976. All areas of the state were required to comply with all sections of Chapter 111 by December 31, 1973. Subsequent SIP revisions in 1979 and 1980 required implementation of revised sections of Chapter 111 in individual areas not meeting the PM NAAQS. When the PM indicator for the PM NAAQS changed from TSP to PM_{10}, new PM SIP revisions were adopted. PM_{10} SIP revisions adopted in 1988, 1989, and 1991 cited Chapter 111 as a control strategy for El Paso County, the one area in Texas not meeting the PM_{10} NAAQS.

On May 14, 2004, Baker Botts L.L.P. (Baker Botts) submitted a petition for rulemaking to repeal §111.155. Baker Botts requested that the rule be repealed because the rule is inconsistent with the direction of modern air quality regulation, results in unnecessarily long delays in air permit issuance, imposes PM controls without evidence of nuisance conditions, and reflects a burdensome and unnecessary regulatory tool to address PM. On July 28, 2004, the commission initiated rulemaking for §111.155 in response to the petition filed by Baker Botts. The commission stated that rulemaking would include an evaluation of §111.155, with stakeholder involvement, to determine if the current rule is adequate, needs to be amended, or repealed. As part of this evaluation, a stakeholder meeting was held on April 5, 2005, at commission headquarters in Austin, Texas, to receive formal stakeholder comments.

Section 111.155 is primarily used in air permitting, field operations, and the enforcement division to address nuisance PM. The technical details for establishing the specific net PM concentrations listed in §111.155 are not known. Little documentation exists that describes the rationale or the science used in select-

ing these concentrations. The background information that does exist comes from Dr. Herbert McKee, former TACB chairman during the establishment of the 1967 and 1972 PM standards. Based on published literature he authored as well as his written comments to the commission, the 1972 PM standards were based primarily on the professional judgment of air quality regulators at the time. Dr. McKee emphasized that the 1972 PM standards were established to address nuisance PM, not health concerns. According to Dr. McKee, the TACB deferred to the PM NAAQS to address health issues.

In terms of health effects of PM, research overwhelmingly supports respirable PM (PM that can enter the lungs, generally regarded as ten micrometers or smaller in diameter) as the primary causative agent of PM-related health effects, particularly premature mortality and severe morbidity. PM fractions larger than ten micrometers, which are often the dominant PM size fractions, on a per mass basis, collected in TSP samples, are poor indicators of potential health effects. Therefore, the current PM NAAQS using PM_{10} and $PM_{2.5}$ as indicators are better suited to address health concerns than standards based on TSP, such as §111.155. Additionally, the commission has developed effects screening levels (ESLs) to address health and welfare concerns for specific air pollutants occurring as PM (e.g., arsenic, chromium, silica, carbon black). ESLs are used to evaluate air concentrations for air permits and ambient air monitoring data, as well as set remediation clean-up levels. ESLs, in addition to the PM NAAQS, provide a means to assess health concerns from ambient PM and ultimately a basis for taking regulatory action when deemed necessary.

The use of §111.155 as a tool to address nuisance PM has historically occurred in the areas of enforcement, through the use of ambient air monitoring to determine net PM source contributions, and air permitting, generally with the use of air dispersion modeling. The PM standard is used infrequently as an enforcement tool for nuisance PM, due to the monitoring requirements to determine compliance. On the few occasions when monitoring is conducted, complexities such as accessibility of monitoring locations, weather, wind patterns, confounding PM sources (e.g., traffic on unpaved roads), facility operations, etc. can make meaningful sampling results difficult to obtain and interpret. Other enforcement tools available to address nuisance PM include, but are not limited to, tape lifts, still photographs, videotape, field observations of commission staff, the opacity limits described in §111.111 and §111.113, and the general nuisance rule in 30 TAC §101.4. In terms of air permitting, modeled ambient levels of TSP can be compared to the concentrations listed in §111.155 to evaluate the potential for nuisance PM. In addition to comparing modeled TSP levels to the standards, the commission can incorporate preventative measures against nuisance PM such as best available control technology (BACT) and special permit conditions. The inherent complexities and uncertainties of modeling emissions from PM sources that generate TSP has raised concern about the accuracy of these modeled estimates. This may result in imposing PM controls without evidence of nuisance conditions (aside from modeling results) and can delay issuance of air permits. BACT and special permit conditions may serve as more reliable preventative tools for air permitting to address nuisance PM without being unduly burdensome to the regulated community.

To obtain a perspective of other state approaches to PM, specifically nuisance PM, the commission surveyed all 50 states. Based on this survey, the commission determined that §111.155 is generally inconsistent with approaches used by the vast majority of states, with 40 out of 50 states not having ambient standards for nuisance PM. In lieu of ambient air standards, the states generally use other rules and procedures such as opacity standards, best management practices to address nuisance PM (i.e., BACT), and comparing modeled PM concentrations to the PM NAAQS. Many of these rules and procedures are currently available and utilized by the commission. As discussed previously, examples of tools and procedures used by the commission include BACT, special permit conditions, the opacity limits in §111.113 and §111.111, and the general nuisance rule in §101.4.

As previously stated, the science underlying the basis of §111.155 is largely unknown due to the lack of documentation. However, the evidence that is available points to professional judgment and policy playing a significant role in the derivation of the standards listed in the rule. In addition, the rule was intended to address nuisance PM rather than health concerns. The PM NAAQS addresses health issues of PM. In addition, the commission has ESLs that address the health concerns of specific PM constituents (e.g., metals, carbon compounds, silica). The size fraction that §111.155 has historically addressed is TSP. Regulation of TSP was prominent at both the state and federal levels during, and immediately following, the promulgation of §111.155. However, the majority of federal and state regulatory authorities have since replaced TSP ambient standards with PM standards of a smaller PM size (i.e., PM_{10}, $PM_{2.5}$). These changes were dictated by advances in the science of PM that highlighted the importance of PM size fractions smaller than TSP. TSP has since been relegated to nuisance PM concerns. It is generally understood that determining nuisance is highly subjective and is dependent on the PM size, composition, and concentration, as well as the tolerance of individuals for PM depending on the use of their property. This subjectivity prevents the establishment of technically-defensible ambient standards to address nuisance PM. Tools and procedures already available to the commission, and consistent with other state environmental regulatory agencies, are used to address nuisance PM.

Repealing §111.155 will not weaken the Texas SIP. As discussed previously, the commission has adequate tools to enforce the PM NAAQS, such as BACT, special permit conditions, and the opacity limits in §111.111 and §111.113. Additionally, since TSP is no longer used as an indicator for a criteria pollutant, it is not an appropriate component of the Texas SIP and should be removed.

Based on the commission's evaluation, as well as stakeholder input, the commission proposes the repeal of §111.155 given that it is not based on good science nor is it current and necessary. The commission determined that it has sufficient tools and procedures currently available to address nuisance PM.

SECTION DISCUSSION

Section 111.155 establishes one-hour and three-hour ground level concentration levels for particulate matter. The commission proposes to repeal §111.155.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period that the proposed repeal is in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the pro-

posed repeal. The proposal would repeal §111.155, regarding the state standards for ground level concentrations of PM.

The commission evaluated §111.155 to determine if the current rule was adequate, needed to be amended, or should be repealed. The current rule established standards for permissible levels of PM affecting enjoyment of property rather than human health. Upon evaluation, which included consideration of stakeholder input, the commission is proposing to repeal the rule. The commission determined that required compliance with NAAQS for PM adequately protects human health and welfare, and the use of other tools at its disposal, such as the general prohibition, will provide the same or better enforcement for PM nuisances than the current rule. Various tools like videotaping, requiring the use of best management practices, and requiring engineering controls on the emitters of PM that constitute a nuisance will effectively and more defensibly enforce compliance for PM emissions. Compliance with the current rule may require the review of modeling data that regulated entities submit as part of their air permit applications. Under the proposed rulemaking, this type of data would no longer be necessary. However, agency staff may be required to review other information in lieu of modeling data to ensure that nuisance levels of PM are prevented. Therefore, the commission does not anticipate any cost savings to result from this rulemaking.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years that the repeal is in effect, the public benefit anticipated from the changes seen in the proposal will be more effective prevention of nuisances through reliance on the health and welfare protection provided by the NAAQS, the nuisance prohibition, and other tools at the commission's disposal.

Businesses emitting PM would no longer be required to meet the standards of the current rule and may be able to save money currently spent on modeling data submitted when requesting an air permit. However, compliance with other agency conditions such as the use of best practices or more stringent engineering controls to reduce the emission of PM may offset the savings generated by not having to do modeling analysis. Whether a business would experience cost savings or increased costs depends on the facility to be regulated and the tools employed by the agency in ensuring that particulate emissions remain in compliance with NAAQS. Therefore, the proposed repeal may affect the regulated community's compliance burden for PM and may translate into cost savings.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Section 111.155 applies to all entities, including small or micro-businesses, and they would experience the same cost savings or cost increases as a large business. The amount of any savings or increase would vary widely among regulated entities and would depend on the facility regulated and the tools employed by the agency in ensuring acceptable emission levels of PM.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed repeal does not meet the definition of a "major environmental rule" as defined in the statute. Therefore, Texas Government Code, §2001.0225 does not apply to this rulemaking. "Major environmental rule" is defined in Texas Government Code, §2001.0225(g)(3), as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific purpose of the proposed repeal is to delete a rule that is no longer necessary, effective, current, or based on good science, as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEAL section of this preamble. This proposed repeal will not have an adverse material impact because the commission determined that the currently existing NAAQS for PM adequately protects human health and welfare, and the remaining prohibition against nuisance conditions remains in effect. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether this action would constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed repeal would be neither a statutory nor a constitutional taking of private real property. The proposed repeal of §111.155 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a government action. Consequently, this proposal does not meet the definition of a taking under Texas Government Code, §2007.002(5). This rulemaking is proposed to repeal §111.155, since the commission determined that the currently existing NAAQS for PM adequately protects human health and welfare, and the remaining prohibition against nuisance conditions remains in effect. Therefore, this proposed repeal will not constitute a taking under Texas Government Code, Chapter 2007. The commission invites public comment on this preliminary takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC

§501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because §111.155 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to delete requirements relating to §111.155.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 15, 2005, at 2:00 p.m. in Building E, Room 254S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., January 13, 2006, and should reference Rule Project Number 2005-013-111- EN. Copies of the proposal can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Kathy Singleton, Air Quality Planning and Implementation Division, at (512) 239-6098.

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; and THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air.

The proposed repeal implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§111.155. Ground Level Concentrations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505198
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 25, 2005
For further information, please call: (512) 239-5017

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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ or commission) proposes the repeal of §§114.3, 114.150, 114.151, and 114.153 - 114.157.

The commission also proposes to submit to the United States Environmental Protection Agency (EPA) revisions to the state implementation plan (SIP) addressing the repeal of these rules.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The Federal Clean Air Act Amendments of 1990 (FCAA), §182(c)(4), required states to either adopt the Federal Clean Fuel Fleet (FCFF) Program outlined in FCAA, §246, or implement a program that demonstrates long-term reductions in ozone-producing and toxic air emissions equal to those achieved under the FCFF Program.

The FCFF Program requires federal, state, and local governments, and private fleets to purchase low emission vehicles (LEVs) in areas classified by the EPA as being in serious, severe, or extreme nonattainment of the National Ambient Air Quality Standards (NAAQS) for ozone and carbon monoxide (CO). The federal program mandates increasing percentages of LEV purchases by the affected fleets in the covered nonattainment areas in vehicle model years 1999, 2000, and 2001.

The State of Texas, in a committal SIP revision submitted to the EPA on November 15, 1992, opted out of the FCFF Program in order to implement a fleet emission control program designed by the state.

In 1994, the commission submitted the state's opt-out program in a SIP revision to the EPA and adopted rules to implement the Texas Alternative Fuel Fleet Program as a substitute to the FCFF Program in the areas of Texas classified by EPA as being in serious, severe, or extreme nonattainment of the NAAQS for ozone or CO.

In 1995, the 74th Legislature modified the state's alternative fuels program through the passage of Senate Bill (SB) 200. The legislature facilitated fuel neutrality through the incorporation of the federal LEV standards for certain affected fleets regardless

of fuel type. The legislation required the commission to adopt regulations to implement the program in all ozone nonattainment areas.

In response, the commission adopted regulations to implement the modified program and developed a revision to the SIP outlining the state's substitute program to the FCFF Program. However, the 75th Legislature met in 1997 and removed the commission's authority to require the program in moderate nonattainment areas through passage of SB 681. This new legislation limited the commission's authority to the serious and above ozone nonattainment areas. In addition, SB 681 modified the state's alternative fuels program. The legislature retained the basic requirement of LEV purchases, but modified the implementation schedule, added an additional exception from the program, and altered the grandfathering provisions of the statute. This new legislation required the commission to adopt regulations to implement the program.

On December 16, 1997, the EPA finalized federal regulations for the National Low Emission Vehicle (NLEV) Program. The NLEV Program was developed to allow manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that were more stringent than the EPA could mandate prior to 2004. The EPA made a final determination on implementation of NLEV on March 2, 1998. With the NLEV Program successfully implemented nationally, the commission was able to use emission reductions achieved through the NLEV Program to offset any shortfall in emission reductions resulting from the state's substitute for the FCFF Program.

On July 29, 1998, the commission adopted regulations and a revision of the Texas Clean Fleet (TCF) SIP to set forth the LEV requirements for mass transit fleets in each of the serious and above nonattainment areas, and for local government and private fleets operated primarily within the serious and above nonattainment areas. These rules satisfied the state requirements to adopt rules to implement SB 681.

On February 10, 2000, the EPA finalized federal regulations for the Tier II emission standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, vans, and light-duty trucks that were 77% - 95% cleaner than the current emission standards. The new emission standards set a corporate average standard for nitrogen oxides of 0.07 grams per mile for all classes of passenger vehicles beginning in 2004. This includes all light-duty trucks, as well as the largest SUVs. Vehicles weighing less than 6,000 pounds will be phased-in to this standard between 2004 and 2007. Later that same year on October 6, 2000, the EPA finalized federal regulations for emission standards for model year 2004 and newer heavy-duty diesel engines (HDDE) and vehicles that were equivalent to the ultra low emission vehicle (ULEV) standards under the FCFF Program.

In June 2005, the state statutes requiring the commission to establish and implement LEV requirements for mass transit fleets and for private and local government fleets (i.e., the TCF Program) as codified in Texas Health and Safety Code (THSC), Chapter 382, Subchapter F, were repealed by SB 1032 by the 79th Legislature, 2005. Currently, the commission's rules in §§114.3 and 114.150, 114.151, and 114.153 - 114.157 implementing these statutes require mass transit authorities, private companies, and local government fleets in the Houston-Galveston-Brazoria (HGB), Dallas-Fort Worth (DFW), and El Paso ozone nonattainment areas to ensure that a specified percentage of their new fleet vehicle purchases are vehicles that have been certified by the EPA to the federal LEV standards.

The commission had recommended that the Texas Legislature repeal these enabling statutes because the LEV standards have been superseded by the cleaner federal Tier II emission standards that were promulgated in February 2000 and the federal 2004 heavy-duty engine emission standards that were promulgated in October 2000. As a result of these new emission standards, requiring fleets to comply with a mandatory LEV percent-of-purchase requirement is no longer an effective method to reduce emissions from fleet vehicles. In addition, the continued implementation of a mandatory vehicle purchase program is no longer necessary since, under the Texas Emissions Reduction Plan (TERP), the commission's Emissions Reduction Incentive Grants Program provides financial incentives to private, local government (including school districts), and mass transit fleets to voluntarily purchase the cleanest vehicles possible that meet their operational needs.

The proposed repeal of these rules would have no impact on the emissions from fleets since all new fleet vehicles are being certified by the EPA to either the federal Tier II emission standards or the federal 2004 heavy-duty engine emission standards, both of which are cleaner than the federal LEV standards currently being required under these rules. In addition, the proposed repeals would remove an administrative burden since the affected fleets would no longer be required to submit biennial fleet compliance reports to the commission.

In conjunction with the proposed repeal of these rules, the commission proposes to revise the SIP to remove the TCF Program as an ozone control strategy since the federal emission standards for model year 2004 and later light-duty and heavy-duty motor vehicles are more stringent than those required by the FCFF Program as outlined in the FCAA. The federal emission standards for HDDE in model years 2004 - 2006 are equivalent to the heavy-duty ULEV standards under the FCFF Program and the federal standards for HDDE in model years 2007 and later are approximately 90% cleaner than ULEV. The emission reductions achieved by the Tier II and HDDE standards far surpass the emission reductions that would be expected from implementation of the TCF Program in any of the state's ozone nonattainment areas. The commission requests that the EPA accept the implementation of the Tier II and HDDE emission standards as a substitute to the FCFF Program in the areas of Texas classified by the EPA as being in serious, severe, or extreme nonattainment of the NAAQS for ozone or CO.

SECTION BY SECTION DISCUSSION

The proposed rulemaking would repeal §114.3 in Subchapter A and §§114.150, 114.151, and 114.153 - 114.157, Subchapter E, in its entirety, in accordance with the directive indicated by SB 1032 by the 79th Legislature.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period the proposed repeals are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government.

The proposed action implements SB 1032, and would repeal the existing rules governing the TCF Program. The standards identified under this program have since been superseded by the cleaner federal Tier II emission standards and the federal 2004 heavy-duty engine emission standards. The continued implementation of the TCF Program is no longer necessary. Under TERP, the commission's Emissions Reduction Incentive Grants

Program provides financial incentives to private, local government (including school districts), and mass transit authorities to voluntarily purchase the cleanest vehicles possible that meet their operational needs. The vehicles purchased through this program meet or exceed the new Tier II and federal 2004 heavy-duty engine emission standards.

The proposed repeals would affect all mass transit authorities in the state and all state government, local government, and private fleets in the HGB, DFW, and El Paso ozone nonattainment areas. Under the existing rules, the affected entities were required to report their percentage of the fleet purchases that were certified to be compliant with the EPA's federal LEV standards. Entities that were required to report this information to the agency on a biennial basis would no longer be required to report the information or maintain compliance records. State and local governments may realize a cost savings as a result of the reduced administrative costs required to ensure that a percentage of their new fleet vehicle purchases are certified by the EPA to meet the LEV standards and the costs to prepare and submit compliance reports on a biennial basis. These cost savings are not anticipated to be significant.

PUBLIC BENEFITS AND COSTS

Mr. Perry also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from the changes seen in the proposed action would be a more efficient use of state resources.

The proposed repeal of the TCF rules would eliminate the need for mass transit authorities in the state, as well as state and local governments, and private fleets that operate primarily in the HGB, DWF, and El Paso ozone nonattainment areas to report the percentage of their fleet purchases that have been certified to be compliant with the EPA's federal LEV standards. The affected entities that were required to report this information to the agency on a biennial basis would no longer be required to report the information or maintain compliance records. The anticipated cost savings associated with the proposed action would result from the reduction in administrative costs required to ensure that a percentage of their new fleet vehicle purchases are certified by the EPA to meet the LEV standards and the costs to prepare and submit compliance reports on a biennial basis. These cost savings are not anticipated to be significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed action. The repeal of the rules would result in no additional costs for small and micro-businesses. Small and micro-businesses would experience the same potential cost savings as local governments and industry.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed action and determined that a local employment impact statement is not required because the proposed repeals do not adversely affect a local economy in a material way for the first five years that the proposed repeals are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed repeals would eliminate commission rules that currently require mass transit authorities, private companies, and local government fleets in the HGB, DFW, and El Paso ozone nonattainment areas to ensure that a specified percentage of their new fleet vehicle purchases are vehicles certified by the EPA as LEVs under the federal LEV standards. The proposed action is a rules repeal, and it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The TCF Program currently regulates a sector of the economy. Repeal of the program is therefore unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. Under TERP, the commission's Emissions Reduction Incentive Grants Program provides financial incentives to private, local government (including school districts), and mass transit fleets to voluntarily purchase the cleanest vehicles possible that meet their operational needs. This means the repeals are also unlikely to adversely affect in a material way the environment or public health and safety. Because the repeals would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the repeals do not fit the Texas Government Code, §2001.0225, definition of "major environmental rule."

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed repeals do not constitute a major environmental rule, a regulatory impact analysis is not required. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a taking impact analysis for the proposed repeals. The repeal of the rules would not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The repeals also would not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed repeals would not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the proposed repeals relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the proposed repeals are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The proposed action and SIP revision would ensure that the repeals comply with 40 Code of Federal Regulations (CFR) Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This proposed action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

The commission solicits comments on the consistency of the proposed repeals with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 114 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 114 requirements at their sites affected by the revisions to Chapter 114.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin, Texas, on January 10, 2006, at 10:00 a.m. in Building E, Room 201S, at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral or written statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Holly Vierk, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Brandon Smith, MC 206, Chief Engineer's Office, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-5687; or emailed to *siprules@tceq.state.tx.us*. All comments should reference Rule Project Number 2005-067-114-EN. Comments must be received by 5:00 p.m. on January 17, 2006. The proposed rules may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Morris Brown, Air Quality Planning and Implementation Division, at (512) 239-1438.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code (TWC), §5.102, concerning General Powers; §5.103, concerning Rules; and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (also known as the Texas Clean Air Act). The repeal is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The proposed repeal implements THSC, §§382.002, 382.011, 382.012, and 382.019.

§114.3. Low Emission Vehicle Fleet Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2005.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER E. LOW EMISSION VEHICLE FLEET REQUIREMENTS

30 TAC §§114.150, 114.151, 114.153 - 114.157

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register

office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.102, concerning General Powers; §5.103, concerning Rules; and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (also known as the Texas Clean Air Act). The repeals are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The proposed repeals implement THSC, §§382.002, 382.011, 382.012, and 382.019.

§114.150. Requirements for Mass Transit Authorities.

§114.151. Requirements for Local Governments and Private Entities.

§114.153. Exceptions.

§114.154. Exceptions for Certain Mass Transit Authorities.

§114.155. Reporting.

§114.156. Record Keeping.

§114.157. Low Emission Vehicle Fleet Program Compliance Credits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER J. OPERATIONAL CONTROLS FOR MOTOR VEHICLES
DIVISION 2. LOCALLY ENFORCED MOTOR VEHICLE IDLING LIMITATIONS

30 TAC §114.512, §114.517

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §114.512 and §114.517; and corresponding revisions to the state implementation plan (SIP).

The amended rules will be submitted to the United States Environmental Protection Agency (EPA) as proposed revisions to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The concept of an early, voluntary eight-hour air quality plan, or early action compact (EAC), was endorsed by EPA Region 6 in June 2002, then slightly modified and made available nationally in November 2002. The EACs are tailored to local needs and driven by local decisions. A key point of an EAC is the flexibility afforded areas to select emission reduction measures. Based on quality science, signatories may choose the combination of measures that meet both local needs and emission reduction targets. Each EAC recognizes that not every entity within the EAC area will implement every measure.

Chapter 114, Subchapter J, Operational Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitations rule, was proposed at the request of the local air quality planning organization in the Austin EAC area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties) for use as a control strategy in its EAC agreement to maintain attainment with the federal eight-hour ozone national ambient air quality standards. The rule package also provided local governments in other areas of the state the option of applying these rules in their areas when additional control measures were needed to achieve or maintain attainment of the federal eight-hour ozone standard in the future. The rules were adopted on November 17, 2004.

The December 18, 2002, EAC committed the commission to incorporate a Clean Air Action Plan for the Austin area into the SIP and adopt a revised SIP by December 31, 2004. The idling restriction rule was part of that attainment demonstration. While the Austin Metropolitan Statistical Area (MSA) was monitoring attainment with the eight-hour ozone standard, future monitoring could have shown nonattainment. Therefore, members of the Austin MSA worked to ratify a memorandum of agreement (MOA) with the TCEQ that would allow them to enforce the idling restriction rule in their region. The Locally Enforced Idling Restriction MOA was signed by the commission and members of the Austin EAC area on August 1, 2005.

In meetings with officials of the Austin EAC to develop the idling rule MOA, concerns arose regarding language in the locally enforced idling restrictions. Austin EAC members voiced concern that parts of §114.517, Exemptions, were ambiguous and needed revision. Members of the EAC felt that §114.517(7) and (8) could be misinterpreted to mean that a transit vehicle could idle for a total of one hour. There was also concern that the commission's rule conflicted with Texas Department of Transportation (TxDOT) guidelines for vehicle idling by employees. Austin EAC members brought to the commission's attention TxDOT's policy regarding idling. The guidelines advise employees to idle their vehicles to operate the air conditioner or heating system for employee health and safety while they perform an essential job function related to roadway construction or maintenance. In many instances on-road and off-road vehicles at roadway construction sites must remain in idle mode during normal operations. The commission agrees with the Austin EAC members that the locally enforced idling restrictions should be revised in light of these concerns. At the request of the Austin

EAC members, the commission is proposing revisions to the locally enforced motor vehicle idling rule.

The commission is also proposing revisions to the idling rule to conform to legislation passed in 2005. On May 16, 2005, the legislature passed House Bill (HB) 1540, amendments to Texas Health and Safety Code, Chapter 382, Subchapter B, §382.0191, Idling of Motor Vehicle While Using Sleeper Berth. The bill, effective September 1, 2005, states that the "commission may not prohibit or limit the idling of a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period." In addition, the bill states that, "no driver using the vehicle's sleeper berth may idle the vehicle in a school zone or within 1,000 feet of a public school during its hours of operation," or else be subject to a fine not to exceed $500.

This proposed rulemaking will amend the rule on idling limits for gasoline and diesel-powered engines in motor vehicles within the jurisdiction of any local government in the state that has signed an MOA with the commission to delegate enforcement to that local government. Local enforcement is crucial to the effective implementation of rules to reduce the extended idling of gasoline and diesel-powered heavy-duty vehicles and will help to ensure the reduction in nitrogen oxide (NO_x) and volatile organic compound (VOC) emissions, which is needed by local governments to achieve or maintain attainment of the federal eight-hour ozone standard. These proposed idling limits will lower NO_x emissions and other pollutants from fuel combustion. Because NO_x is a precursor to ground-level ozone formation, reduced emissions of NO_x will result in ground-level ozone reductions.

Currently, there are no federal regulations governing idle time for motor vehicles. Therefore, the state has the authority to control motor vehicle idling. The requirements developed by the commission for this NO_x emission reduction strategy will result in restrictions on the time allowed for motor vehicle idling.

Modeling assessing the benefits of this NO_x emission reduction strategy demonstrated that by the year 2007 the idling limits will reduce NO_x emissions in the Austin MSA by 0.19 tons per day. The commission believes that this proposed amendment to the rule will not reduce the amount of reductions demonstrated.

SECTION BY SECTION DISCUSSION

The proposed amendment to §114.512, Applicability, would amend the existing paragraph as subsection (a). The proposed amendment to §114.512 would also add subsection (b), which would establish that, "no driver of a motor vehicle may use the vehicle's sleeper berth for a government-mandated rest period if the vehicle is within a school zone or within 1,000 feet of a public school during its hours of operation." Any offense under proposed subsection (b) is punishable by a fine not to exceed $500. The requirements under subsection (b) will expire on September 1, 2007, just as in HB 1540.

Proposed §114.517(1) would still provide an exemption for a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less, but only if before September 1, 2007, it does not contain a sleeping berth. That is to say, after September 1, 2007, any vehicle that has a gross vehicle weight rating of 14,000 pounds or less will be exempt from any idling restriction. Until then, these vehicles that contain a sleeper berth are subject to the rule. The proposed amendment to §114.517(4) would replace the phrase, "not including" with "other than." The proposed amendment to §114.517(7) would replace the phrase, "comfort/safety" with "comfort and safety." The proposed amendment to §114.517(4) would also add the phrase, "or public." This change is necessary to combine exemptions §114.517(7) and (8), thereby clarifying the intent of the rule. The proposed amendment to §114.517(8) eliminates language exempting idling up to 30 minutes for, "the primary propulsion engine of a motor vehicle used for transit operations." The proposed amendment to §114.517(8) would add a new exemption for, "the primary propulsion engine of a motor vehicle being used to operate the air conditioning or heating system for employee health or safety when the employee is using the vehicle to perform an essential job function related to roadway construction or maintenance." One reason this exemption has been added is because in most types of construction equipment (e.g., dump trucks, etc.) the operator must remain in the vehicle throughout the workday for both operational and safety reasons. Furthermore, most heavy-duty, on-road vehicles such as dump trucks, asphalt maintenance units, and aerial devices have power takeoff units that operate ancillary equipment attached to the vehicle and that are powered by the primary propulsion engine. Therefore, the primary propulsion engine must remain in an idling mode. Proposed §114.517(11) would allow for the exemption of, "the primary propulsion engine of a motor vehicle when it is necessary for the driver to power a heater or air conditioner while he/she is using the vehicle's sleeper berth for a government-mandated rest period." Section 114.517(11) expires on September 1, 2007. This language has been added in order to ensure that the rule is compliant with the requirements set forth in HB 1540.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Assessment, determined that for the first five-year period the proposed amendments are in effect, no fiscal implications are anticipated for units of state or local government.

The proposed rules implement HB 1540, 79th Legislature, 2005, by amending the idling limits for gasoline and diesel-powered engines in motor vehicles within the jurisdiction of any local government in the state that has signed an MOA with the commission to implement the locally enforced motor vehicle idling rule. The proposed rules would allow operators of motor vehicles with sleeper berths to idle for reasons not permitted by the current rules. Specifically, commercial vehicles would be allowed to idle the motor to heat or cool the vehicle in which the driver is using the sleeper berth for a government mandated rest break. The proposed rules would prohibit a commercial driver from using the sleeper berth and idling the engine within a school zone or within 1,000 feet of a public school during its hours of operation. The proposed rules also include an idling exemption for construction and repair vehicles and remove an idling exemption for transit vehicles.

The proposed rules will impact the Austin EAC members and any other local governments in the state who wish to adopt additional control measures to achieve or maintain attainment of the federal eight-hour ozone standard. Any enforcement costs for local governments to implement the agreement for the idling controls are voluntary. However, the proposed rules do provide local governments the authority to fine drivers $500 for using their sleeper berths and idling within a school zone or within 1,000 feet of a public school during its hours of operation. No fiscal implications are expected for the agency as enforcement of the idling rule is delegated to local governments who enter into an agreement with the commission.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules would be the provision of additional options for local governments to use to ensure a reduction in NO_x and VOC emissions needed to maintain attainment with the federal eight-hour ozone standards.

No fiscal implications are anticipated to businesses or individuals as a result of the implementation of the proposed amendments. The exemptions from the idling rule will allow drivers to idle the motor to heat or cool the vehicle in which the driver is using the sleeper berth for a government mandated rest break.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of implementation of the proposed amendments. Any fiscal implications would be the same as those for large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed amendments do not adversely affect a local economy in a material way for the first five years that the proposed amendments are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225 because although the proposal meets the definition of a "major environmental rule" as defined in the statute, it does not meet any of the four applicability requirements listed in §2001.0225(a). The regulatory analysis requirements of Texas Government Code, §2001.0225 only apply to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. Specifically, this proposal will amend the rules that limit heavy-duty motor vehicle idling within the jurisdiction of any local government in the state that has signed an MOA with the commission to delegate enforcement to that local government. The amendments will clarify current rule requirements and implement the new requirements of HB 1540. Currently, there are no federal regulations governing idle time for motor vehicles. This proposal therefore does not exceed a standard set by federal law. The amendments are needed to implement state law, and the proposal therefore does not exceed an express requirement of state law. The proposed rules do involve a compact, which is an agreement or contract between the state and an agency or representative of federal government to implement a state and federal program, however, the proposed amendments do not exceed the requirements of that compact. This proposed rulemaking helps the Austin EAC area continue to meet the milestones of the compact and demonstrate continuing attainment of the eight-hour ozone standard. Finally, this proposed rulemaking was not developed solely under the general powers of the agency. Because this rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225 does not apply, and a regulatory impact analysis is not required.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a taking impact analysis for the proposed rules. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rules will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking action and found that the proposal is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in §505.11, and therefore will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that under 31 TAC §505.22, the proposed rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of the proposed rulemaking. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and polities. Interested persons may submit comments regarding the consistency of the proposed amendments with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

Public hearings for this proposed rulemaking have been scheduled for the following time and location: January 10, 2006, 10:00 a.m., Texas Commission on Environmental Quality, 12100 North I-35, Building E, Room 201S, Austin. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions before and after each hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs, should contact the Chief Engineer's Office at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Brandon Smith, MC 206, Chief Engineer's Office, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-5687; or emailed to siprules@tceq.state.tx.us. All comments should reference Rule Project Number 2005-064-114-EN. Comments must be received by 5:00 p.m. on January 17, 2006. The proposed rules may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/us/nav/rules/propose_adopt.html*. For further information, please contact Erik Gribbin, Air Quality Planning and Implementation Division, at (512) 239-2590.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.0191, which authorizes use of a sleeping berth for a government-mandated rest period; and §382.039, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendments implement TCAA, §§382.002, 382.011, 382.012, 382.019, 382.0191, and 382.039.

§114.512. Control Requirements for Motor Vehicle Idling.

(a) No person shall cause, suffer, allow, or permit the primary propulsion engine of a motor vehicle to idle for more than five consecutive minutes when the motor vehicle, as defined in §114.510 of this title (relating to Definitions), is not in motion during the period of April 1 through October 31 of each calendar year.

(b) No driver using the vehicle's sleeper berth may idle the vehicle in a school zone or within 1,000 feet of a public school during its hours of operation. An offense under this subsection may be punishable by a fine not to exceed $500. This subsection expires September 1, 2007.

§114.517. Exemptions.

The provisions of §114.512 of this title (relating to Control Requirements for Motor Vehicle Idling) do not apply to:

(1) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less, and if before September 1, 2007, does not have a sleeper berth;

(2) - (3) (No change.)

(4) the primary propulsion engine of a motor vehicle providing a power source necessary for mechanical operation, other than [~~not including~~] propulsion, and/or passenger compartment heating, or air conditioning;

(5) - (6) (No change.)

(7) the primary propulsion engine of a motor vehicle that is being used to supply heat or air conditioning necessary for passenger comfort and safety [~~comfort/safety~~] in [~~those~~] vehicles intended for commercial or public passenger transportation, or passenger transit operations, [~~school buses~~] in which case idling up to a maximum of 30 minutes is allowed;

(8) the primary propulsion engine of a motor vehicle being used to provide air conditioning or heating necessary for employee health or safety while the employee is using the vehicle to perform an essential job function related to roadway construction or maintenance [~~the primary propulsion engine of a motor vehicle used for passenger transit operations in which case idling up to a maximum of 30 minutes is allowed~~];

(9) the primary propulsion engine of a motor vehicle being used as airport ground support equipment;[~~or~~]

(10) the owner of a motor vehicle rented or leased to a person that [~~who~~] operates the vehicle and is not employed by the owner; or [~~.~~]

(11) a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period. This subsection expires September 1, 2007.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER L. PERMITS FOR SPECIFIC DESIGNATED FACILITIES

30 TAC §§116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426, 116.1428

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §§116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426, and 116.1428.

The new sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under these proposed rules, the eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings. Other portions of HB 2201 reflected in the proposed rules define relevant terms, establish an emissions profile, and clarify jurisdiction issues between TCEQ and the Railroad Commission of Texas. Much of the content of the proposed rules originates from new Texas Health and Safety Code (THSC), §382.0565, Clean Coal Project Permitting Procedure, and new Texas Water Code (TWC), §5.558 and §27.022, which were created by HB 2201.

The purpose of the proposed revisions to Chapter 116 is to implement the requirements of HB 2201 that are to establish a reasonably-streamlined procedure for the commission to authorize the emission of certain air contaminants by projects within the commission's jurisdiction that are a component of the FutureGen project. Because HB 2201 eliminates contested case hearings on applications for permits required to authorize a component of the FutureGen project, public notice requirements for these applications need to be modified to reflect that the applications are not subject to contested case hearings.

The proposed rules do not include an expiration date or sunset date, but the commission specifically requests comment on whether an expiration date or sunset date is necessary.

Corresponding rulemakings are published in this issue of the *Texas Register* that include changes to 30 TAC Chapter 50, Action on Applications and Other Authorizations; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities; and 30 TAC Chapter 331, Underground Injection Control.

SECTION BY SECTION DISCUSSION

§116.1400. Purpose; and §116.1402. Applicability.

The commission proposes these new sections to specify the purpose and applicability of proposed new Subchapter L, Permits for Specific Designated Facilities. Specifically, the purpose of the new subchapter is to establish reasonably streamlined procedures to issue authorization for certain projects; those procedures are applicable to authorizations to construct and operate a component of the FutureGen project.

§116.1404. Permit Required.

The proposed new section requires anyone planning to construct a component of the FutureGen project designated in §116.1402 that may emit air contaminants into the air of this state to obtain a permit under this subchapter or qualify for a permit by rule under 30 TAC Chapter 106, Permits by Rule.

§116.1406. Compliance History.

The proposed new section requires compliance history reviews for any applications under the new subchapter.

§116.1408. Definitions.

The proposed new section contains definitions applicable to the new subchapter, clean coal projects, and the FutureGen project. Specifically, the proposed new section defines: clean coal project, coal, FutureGen project, component of the FutureGen project, FutureGen project profile, and designated project.

§116.1410. Emissions Profile for FutureGen Projects.

The proposed new section would establish an emissions profile for FutureGen projects. This emissions profile is included in the event that the United States Department of Energy does not specify an emissions profile for the FutureGen project. The emissions profile establishes limitations for the emissions of air contaminants from a component of a FutureGen project.

§116.1414. Applications for Facilities that are Components of a Designated Project.

The proposed new section provides the requirements for applications submitted under proposed new §116.1404 and requires any application to be submitted with a completed Form PI-1, Facility Permit Application. Proposed new §116.1414(1) - (11) requires applicants to make certain demonstrations regarding: protection of public health and welfare; measurement of emissions; New Source Performance Standards; National Emissions Standards for Hazardous Air Pollutants; NESHAPs for source categories (applicable maximum achievable control technology standard); performance demonstrations; nonattainment review; prevention of significant deterioration review; air dispersion modeling or ambient monitoring; federal standards of review for constructed or reconstructed major sources of hazardous air pollutants; application content; and best available control technology.

§116.1416. Public Notice.

The proposed new section establishes reasonable public notice requirements for applications to construct a component of a FutureGen facility. These requirements include the following: publication of the draft permit and preliminary decision in a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site; and availability of a copy of the application and draft permit for review and copying at a public place. Proposed new §116.1416(a)(1) - (10) state the required

contents of the notice, which in addition to factual information about the applicant and the proposed location of the facility, include a description of the comment procedures; a statement that a person affected by the emission of air pollutants is entitled to request a notice and comment hearing under §116.1418, Public Participation, in a font size that provides emphasis and distinguishes it from the rest of the notice; a description of the procedure by which a person may be placed on a mailing list for further information; the time and location of any public meeting, as applicable; and the name, address, and phone number of the commission office to be contacted for further information. Proposed new §116.1416(b) and (d) provide the following procedural requirements: the applicant shall provide the executive director and all local air pollution control agencies having jurisdiction a copy of the public notice and date of publication; and the executive director shall make available for public inspection during the public comment period a copy of the draft permit and complete application. Proposed new §116.1416(e) establishes the requirements for the sign that the applicant shall place at the site declaring the filing of the application and stating how the executive director may be contacted for further information; proposed new §116.1416(c) requires the applicant to submit certification of compliance with the signage requirements in §116.1416(e). Proposed new §116.1416(f) requires that the executive director receive public comment for 30 days after the notice is published; proposed new §116.1416(g) allows the draft permit to be changed based on comments received.

§116.1418. Public Participation.

The proposed new section provides specific procedures for public participation in the issuance of a FutureGen permit. The new section states that permit applications for a component of a FutureGen project are not subject to a contested case hearing, establishes a process for issuing permits required to construct a component of the FutureGen project, and provides procedures for public comment. THSC, §382.0565(c), and TWC, §5.558(b), both require the commission's use of "*public meetings*, informal conferences, or advisory committees to gather the opinions and advice of interested persons." (Emphasis added.) With respect to the use of public meetings, the intent of proposed new §116.1418 is to provide a notice and comment hearing procedure to facilitate those public meetings. Any public hearing held under this subchapter is not an evidentiary proceeding. Proposed new §116.1418(a) states that applications under this chapter are not subject to the contested case hearing process, but are subject to a notice and comment hearing process. Proposed new §116.1618(b) - (m) specifies the notice and comment hearing process. Specifically, subsections (b) - (m) allow for any person affected by emissions from a site regulated by this subchapter to request, within the 30-day comment period, the executive director to hold a notice and comment hearing on the draft permit; provide that the executive director shall decide whether to hold a hearing; state the requirements for publication of notice of a hearing on a draft permit; require the applicant to submit to the executive director and all local air pollution agencies having jurisdiction a copy of the notice of hearing and date of publication; allow the hearing notice to be combined with the notice of the draft permit required by this subchapter; allow any person to submit oral or written statements and data concerning the draft permit; require that any person believing that the draft permit or preliminary decision are inappropriate shall submit all reasonable arguments before the end of the comment period; and state the requirements for the executive director in responding to comments. These subsections also include administrative provisions requiring a tape recording or written transcript of the hearing to be made available to the public; requiring the executive director to keep and make available to the public a record of all comments received and issues raised at the hearing; allowing the draft permit to be changed based on comments; and establishing the procedure for the executive director to provide notice of the executive director's final decision, the executive director's response to any comments submitted during the comment period or at the public hearing specified in this section, and the identification of any change in the condition of the draft permit and the reasons for the change to any person who commented during the public comment period or at the hearing, and to the applicant. Finally, proposed new §116.1418(n) requires the commission to use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons for all permits issued under this subchapter. Any public meetings held under this subchapter shall follow the notice and comment hearing procedures as defined in subsections (a) - (m). The executive director shall hold a public meeting on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or if the executive director determines that there is substantial public interest in the proposed activity.

§116.1420. Permit Fee.

The proposed new section would require payment of a permit fee consistent with the requirements of Chapter 116, Subchapter B, Division 4, Permit Fees.

§116.1422. General and Special Conditions.

The proposed new section states certain general and special conditions that will be included in permits issued under this subchapter. The general conditions in proposed new §116.1422(b) include a report of construction progress, start-up notification, sampling requirements, equivalency of methods, recordkeeping, maximum allowable emission rates, maintenance of emission control, and compliance with applicable rules. Proposed new §116.1422(c) allows special conditions that are more restrictive than those in this title to be attached to a permit.

§116.1424. Amendments and Alterations of Permits Issued Under this Subchapter.

The proposed new section provides requirements for amendments or alterations of permits issued under this subchapter.

§116.1426. Renewal of Permits Issued Under this Subchapter.

The proposed new section provides for renewals of permits issued under this subchapter.

§116.1428. Delegation.

The proposed new section delegates to the executive director authority to take action on a permit issued under this subchapter.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period that the proposed new sections are in effect, no fiscal implications are anticipated for the agency or other units of state or local government. Any entities wishing to be permitted under the proposed rules may experience some cost savings due to a streamlined permitting process.

The proposed rules implement HB 2201. HB 2201 directs the commission to establish by rule, streamlined permitting proce-

dures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. The legislature determined that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and determined that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects.

At this time, there have been no permits issued by the agency for FutureGen projects. The commission anticipates that there may be one entity in the state that may apply for such a permit in the future. As the proposed rules would eliminate the contested case hearing process for specific projects and do not impose any new requirements for the agency, there may be minor cost savings to TCEQ and the State Office of Administrative Hearings due to the reduction in the number of contested case hearings.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed new rules are in effect, the public benefit anticipated from the changes due to the proposed rules will be compliance with state law and improving the state's ability to compete for federal funding for FutureGen projects. These projects are anticipated to result in the development of cleaner sources of power to meet energy demands.

The proposed new rules may result in some reduced costs for eligible industry projects, but in general any cost savings are not expected to be significant.

The proposed rules are expected to only apply to one project at the current time. The project involves a variety of equipment used for power generation, hydrogen production, and carbon dioxide sequestration. This equipment may include bulk fuel handling equipment, gasifiers, reactors, separators, turbines, sulfur recovery units, and emission control equipment. Industry projects eligible by the proposed rules would no longer be subject to a contested case hearing. Instead, these projects would be subject to a notice and comment hearing process.

The elimination of contested case hearings may reduce travel costs for applicants, and may result in reduced administrative or professional costs that would have been incurred by the applicant to prepare for a contested case hearing.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Small or micro-businesses are not expected to apply for permits for FutureGen projects, but if they do, they would experience the same cost savings as large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule" as defined in the statute. Therefore, Texas Government Code, §2001.0225, does not apply to this rulemaking. "Major environmental rule" is defined in Texas Government Code, §2001.0225(g)(3), as a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules are intended to establish notice requirements for authorizing certain types of projects required for the FutureGen project. The proposed rules are only procedural rules establishing public notice requirements to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The proposed rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the definition of "major environmental rule" in Texas Government Code, §2001.0225.

Furthermore, the proposed rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these applicability requirements. First, the proposed rules are consistent with, and do not exceed, the standards set by federal law. Second, the proposed rules do not exceed an express requirement of state law, instead these rules implement HB 2201. Third, the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not propose these rules solely under the general powers of the agency, but rather under the authority of THSC, §382,0565, as added by HB 2201, which directs the commission, by rule, to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; TWC, §5.558, as amended by HB 2201, which directs the commission, by rule, to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the injection of carbon dioxide produced by a clean coal project to the extent authorized by federal law.

Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether this rulemaking would constitute a takings under Texas Government Code, Chapter 2007. The proposed rules are intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The proposed rules are only procedural rules establishing a system to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The proposed rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the proposed rules will not constitute a takings under Texas Government Code, Chapter 2007.

The commission invites public comment on this preliminary takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed revisions include procedural mechanisms to authorize new sources of air contaminants; however, the proposed revisions do not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because proposed new Subchapter L includes applicable requirements under 30 TAC Chapter 122, Federal Operating Permits Program, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the proposed new Subchapter L requirements for each emission unit affected by the addition of the requirements in Subchapter L at their site.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 20, 2005, at 10:00 a.m. in Building B, Room 201A, at the TCEQ's complex, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-053-091-PR. The proposed rules may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. Comments must be received by 5:00 p.m., December 27, 2005. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; THSC, §382.0518, concerning preconstruction permits; THSC, §382.056, concerning notice of intent to obtain permit or permit review and hearing; THSC, §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The proposed new sections implement TWC, §5.558(c) and THSC, §382.0565(d).

§116.1400. Purpose.

The purpose of this subchapter is to establish, by rule, reasonably streamlined procedures for the commission to issue authorization for

projects within the commission's jurisdiction under Texas Health and Safety Code, Chapters 361 and 382 and Texas Water Code, Chapters 5 and 26.

§116.1402. Applicability.

(a) This subchapter applies to applications for authorization required to construct and operate a component of the FutureGen project.

(b) With the exception of subsection (a) of this section, as a specific but not limited exclusion, this subchapter does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

§116.1404. Permit Required.

Any person who plans to construct a component of a project as designated in §116.1402 of this title (relating to Applicability) that may emit air contaminants into the air of this state must obtain a permit under this subchapter or qualify for a permit by rule under Chapter 106 of this title (relating to Permits by Rule).

§116.1406. Compliance History.

For all permit reviews under this subchapter, compliance history reviews are required under Chapter 60 of this title (relating to Compliance History).

§116.1408. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Clean coal project--The installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project. The term includes the construction or modification of a facility for electric generation, industrial production, or the production of steam as a byproduct of coal gasification to the extent that the facility installs one or more components of the FutureGen project.

(2) Coal--All forms of coal, including lignite.

(3) FutureGen project--A common reference to the coal-based integrated sequestration and hydrogen project to be built in partnership with the United States Department of Energy.

(4) Component of the FutureGen project--A process, technology, or piece of equipment that:

(A) is designed to employ coal gasification technology to generate electricity, hydrogen, or steam in a manner that meets the FutureGen project profile;

(B) is designed to employ fuel cells to generate electricity in a manner that meets the FutureGen project profile;

(C) is designed to employ a hydrogen-fueled turbine to generate electricity where the hydrogen is derived from coal in a manner that meets the FutureGen project profile;

(D) is designed to demonstrate the efficacy at an electric generation or industrial production facility of a carbon dioxide capture technology in a manner that meets the FutureGen project profile;

(E) is designed to sequester a portion of the carbon dioxide captured from an electric generation or industrial production facility in a manner that meets the FutureGen project profile in conjunction with appropriate remediation plans and appropriate techniques for reservoir characterization, injection control, and monitoring;

(F) is designed to sequester carbon dioxide as part of enhanced oil recovery in a manner that meets the FutureGen project profile in conjunction with appropriate techniques for reservoir characterization, injection control, and monitoring;

(G) qualifies for federal funds designated for the FutureGen project;

(H) is required to perform the sampling, analysis, or research necessary to submit a proposal to the United States Department of Energy for the FutureGen project; or

(I) is required in a final United States Department of Energy request for proposals for the FutureGen project or is described in a final United States Department of Energy request for proposals as a desirable element to be considered in the awarding of the project.

(5) FutureGen project profile--A standard or standards relevant to a component of the FutureGen project, as provided in a final or amended United States Department of Energy request for proposals or contract.

(6) Designated project--Any project subject to the jurisdiction of the commission and designated by the legislature as subject to the alternate public notice requirements in this subchapter.

§116.1410. Emissions Profile for FutureGen Projects.

If the United States Department of Energy does not specify an emissions profile for the FutureGen project, emissions of air contaminants from a component of a FutureGen project shall equal no more than:

(1) 1% of the average sulphur content of the coal or coals used for the generation of electricity at the component;

(2) 10% of the average mercury content of the coal or coals used for the generation of electricity at the component;

(3) 0.05 pounds of nitrogen oxides per million British thermal units (MMBTU) of energy produced at the component; and

(4) 0.005 pounds of particulate matter per MMBTU of energy produced at the component.

§116.1414. Applications for Facilities that are Components of a Designated Project.

Any application submitted under §116.1404 of this title (relating to Permit Required) must include a completed Form PI-1, General Application for Air Preconstruction Permits and Amendments. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information that must be provided before the application is deemed complete. In order to be granted a permit, the applicant for a project as designated in §116.1402(a) of this title (relating to Applicability) shall submit information to the commission that demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the facility will comply with all rules and regulations of the commission and with the intent of Texas Health and Safety Code, Chapter 382, the Texas Clean Air Act (TCAA), including protection of the health and physical property of the people.

(2) Measurement of emissions. The permit may have provisions for measuring the emission of air contaminants as determined by the commission. These provisions may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource

Conservation Commission Sampling Procedures Manual," portable analyzers, or emissions calculations if a known process variable is monitored.

(3) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR) Part 60 will meet at least the requirements of any applicable NSPS as listed under 40 CFR Part 60, promulgated by the United States Environmental Protection Agency (EPA) under the authority granted under Federal Clean Air Act (FCAA), §111, as amended.

(4) National Emission Standards for Hazardous Air Pollutants (NESHAPs). The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAPs, as listed under 40 CFR Part 61, promulgated by EPA under the authority granted under FCAA, §112, as amended.

(5) NESHAPs for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by EPA under FCAA, §112, or as listed in Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63)).

(6) Performance demonstration. The facility will achieve the performance specified in the permit application. The commission may require the applicant to submit additional engineering data after the permit has been issued in order to demonstrate further that the facility will achieve the performance specified in the permit. In addition, the commission may require initial compliance testing to determine ongoing compliance through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing.

(7) Nonattainment review. A facility in a nonattainment area shall comply with all applicable requirements under Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(8) Prevention of significant deterioration review. A facility in an attainment area shall comply with all applicable requirements under Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

(9) Air dispersion modeling or ambient monitoring. The commission may require computerized air dispersion modeling and/or ambient monitoring to determine the air quality impacts from the facility.

(10) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the facility is an affected source as defined in §116.15(1) of this title (relating to Section 112(g) Definitions), the affected source shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(g), 40 CFR Part 63)).

(11) Application content. In addition to any other requirements of this subchapter, the applicant shall:

(A) identify each facility to be included in the permit;

(B) identify the air contaminants emitted; and

(C) provide emission rate calculations.

(12) Best available control technology (BACT). The proposed facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

§116.1416. Public Notice.

(a) The executive director shall direct the applicant to publish a notice of draft permit and preliminary decision, at the applicant's expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The executive director shall direct the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The notice shall contain the following information:

(1) the permit application number;

(2) the applicant's or permit holder's name, address, and telephone number and a description of the manner in which a person may contact the applicant or permit holder for further information;

(3) a description of the location of the site or proposed location of the site;

(4) a description of the activity or activities involved in the permit application;

(5) the location and availability of the following:

(A) the complete permit application;

(B) the draft permit;

(C) all other relevant supporting materials in the public files of the agency;

(6) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(7) a statement that a person who may be affected by the emission of air pollutants from the facility or facilities is entitled to request a notice and comment hearing, pursuant to §116.1418 of this title (relating to Public Participation), printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(8) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application or draft permit;

(9) if applicable, the time and location of any public meeting; and

(10) the name, address, and phone number of the commission to be contacted for further information.

(b) The applicant shall submit a copy of the public notice and date of publication to the executive director and any local air pollution control agencies having jurisdiction over the site.

(c) The applicant shall submit a statement to the executive director certifying that the sign required by subsection (e) of this section has been posted consistent with the provisions of that subsection.

(d) The executive director shall make available for public inspection the draft permit and the complete application throughout the comment period during business hours at the commission's central office and at the appropriate commission regional office where the site is located.

(e) At the applicant's expense, a sign shall be placed at the site declaring the filing of an application for a permit and stating the manner in which the executive director may be contacted for further information.

(1) The sign shall be provided by the applicant and shall substantially meet the following requirements.

(A) The sign shall consist of dark lettering on a white background and shall be not smaller than 18 inches by 28 inches and all lettering shall be no less than 1-1/2 inches in size and block printed capital lettering.

(B) The sign shall be headed by the words "PROPOSED AIR QUALITY PERMIT."

(C) The sign shall include the words "APPLICATION NO." and the number of the permit application.

(D) The sign shall include the words "for further information contact."

(E) The sign shall include the words "TEXAS COMMISSION ON ENVIRONMENTAL QUALITY," and the address of the appropriate commission regional office.

(F) The sign shall include the phone number of the appropriate commission regional office.

(G) The sign shall include the name of the company applying for the permit.

(2) The sign shall be in place by the date of publication of the newspaper notice and shall remain in place and legible throughout the period of public comment.

(3) The sign placed at the site shall be located at or near the site's main entrance, provided that the sign is legible from the public street. If the sign would not be legible from the public street, then the sign shall be placed within ten feet of a property line paralleling a public street.

(A) The executive director may approve variations, if the applicant has demonstrated that it is not practical to comply with the specific sign-posting requirements.

(B) Alternative sign-posting plans proposed by the applicant must be at least as effective in providing notice to the public.

(C) The executive director shall approve the variations before signs are posted.

(f) The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the draft permit.

(g) The draft permit may be changed based on comments.

§116.1418. Public Participation.

(a) With the exception of the permitting procedural requirements specified in any other chapter of this title, permits authorized under this subchapter are not subject to the requirements relating to a contested case hearing under Texas Health and Safety Code, Chapter 382; Texas Water Code; or Texas Government Code, Chapter 2001, Subchapters C - G. Permit applications under this chapter shall be subject to a notice and comment hearing as specified in subsections (b) - (n) of this section, as well as any applicable requirements in Chapters 39 and 55 of this title (relating to Public Notice and Requests for Reconsideration and Contested Case Hearings; Public Comment).

(b) Any hearing regarding a permit will be conducted under the procedures in this section and not under the Administrative Procedures Act.

(c) Any person who may be affected by emissions from a site regulated under this subchapter may request the executive director to hold a hearing on the draft permit. The request must be made during the 30-day public comment period.

(d) The executive director shall decide whether to conduct a hearing. The executive director is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from a site is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from a site regulated under this subchapter, and that request is reasonable, the executive director shall conduct a hearing.

(e) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The notice must be published at least 30 days before the date of the hearing. The notice must include the following:

(1) the time, place, and nature of the hearing;

(2) a brief description of the purpose of the hearing; and

(3) the name and phone number of the commission to be contacted to verify that a hearing will be held.

(f) The applicant shall submit a copy of the notice of hearing and date of publication to the executive director and all local air pollution control agencies having jurisdiction in the county in which the site is located.

(g) At the executive director's discretion, the hearing notice may be combined with the notice of the draft permit required by this subchapter.

(h) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) Reasonable time limits may be set for oral comments, and the submission of comments in writing may be required.

(2) The period for submitting written comments is automatically extended to the close of any hearing.

(3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.

(i) A tape recording or written transcript of the hearing must be made available to the public.

(j) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(k) The executive director shall keep a record of all comments received and issues raised in the hearing. This record must be made available to the public.

(l) The draft permit may be changed based on comments.

(m) After the public comment period or the conclusion of any notice and comment hearing, the chief clerk of the commission shall send by first-class mail the executive director's decision, the executive director's response to any comments submitted during the comment period or at the public hearing specified in this section, and identification of any change in the condition of the draft permit and the reasons for the change to any person who commented during the public comment period or at the hearing, and to the applicant.

(n) The commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons for all permits issued under this subchapter.

(1) Any public meetings held in accordance with this subsection shall follow the notice and comment hearing procedures in subsection (a) - (m) of this section.

(2) The executive director shall hold a public meeting:

(A) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(B) if the executive director determines that there is substantial public interest in the proposed activity.

§116.1420. Permit Fee.

(a) Fees required. Any person who applies for a permit under this subchapter must remit a fee as provided in Chapter 116, Subchapter B, Division 4 of this title (relating to Permit Fees) at the time of application for such permit.

(b) Payment of fees. All permit fees must be remitted in the form of a check or money order made payable to the "Texas Commission on Environmental Quality" and delivered to the Texas Commission on Environmental Quality, P. O. Box 13088, MC 214, Austin, Texas 78711-3088. Required fees must be received before the commission will begin examination of the application.

§116.1422. General and Special Conditions.

(a) Permits issued under this subchapter may contain general and special conditions. The holders of a permit under this subchapter shall comply with any and all such conditions.

(b) General conditions. Holders of permits issued under this subchapter shall comply with the following general conditions, regardless of whether they are specifically stated within the permit document.

(1) Report of construction progress. The permit holder shall report start of construction, construction interruptions exceeding 45 days, and completion of construction. The report shall be given to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.

(2) Startup notification.

(A) The permit holder shall notify the appropriate regional office of the commission prior to the commencement of operations of the facilities authorized by the permit. The notification must be made in such a manner as to allow a representative of the commission to be present at the commencement of operations.

(B) The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times.

(C) Prior to operation of the facilities authorized by the permit, the permit holder shall identify to the commission's Office of Permitting, Remediation, and Registration the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(3) Sampling requirements.

(A) If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures.

(B) All sampling and testing procedures must be approved by the executive director and coordinated with the appropriate regional office of the commission.

(C) The permit holder is also responsible for providing sampling facilities and conducting the sampling operations, or contracting with an independent sampling consultant.

(4) Equivalency of methods. The permit holder must demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to using these methods in fulfilling any requirements of the permit.

(5) Recordkeeping. The permit holder shall:

(A) maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;

(B) keep all required records in a file at the facility site. If, however, the facility site normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the facility site;

(C) make the records available at the request of the executive director or any local air pollution control agency having jurisdiction over the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner;

(D) comply with any additional recordkeeping requirements specified in special conditions attached to the permit;

(E) retain information in the file for at least two years following the date that the information or data is obtained; and

(F) for persons certifying and registering a federally enforceable emission limitation in accordance with §116.611 of this title (relating to Registration To Use a Standard Permit), retain all records demonstrating compliance for at least five years.

(6) Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates."

(7) Maintenance of emission control. The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification for emissions events and maintenance in accordance with Chapter 101, Subchapter F of this title (relating to Emission Events and Scheduled Maintenance, Startup, and Shutdown Activities.

(8) Compliance with rules.

(A) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with Texas Health and Safety Code, Chapter 382, Texas Clean Air Act, and the conditions precedent to the granting of the permit.

(B) If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.

(C) Acceptance includes consent of the executive director to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) Special conditions. The holders of permits issued under this subchapter shall comply with all special conditions contained in the permit document.

(1) Special conditions may be attached to a permit that are more restrictive than the requirements of this title.

(2) Special conditions for written approval.

(A) The executive director may require as a special condition that the permit holder obtain written approval before constructing a source under:

(i) a standard permit in accordance with Subchapter F of this chapter (relating to Standard Permits); or

(ii) a permit by rule in accordance with Chapter 106 of this title (relating to Permits by Rule).

(B) Written approval may be required if the executive director specifically finds that an increase of a particular pollutant could either:

(i) result in a significant impact on the air environment; or

(ii) cause the facility to become subject to review in accordance with:

(I) Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(g), 40 CFR Part 63)); or

(II) the provisions in Chapter 116, Subchapter B, Divisions 5 and 6 of this chapter (relating to Nonattainment Review and Prevention of Significant Deterioration Review).

§116.1424. Amendments and Alterations of Permits Issued Under This Subchapter.

The owner or operator planning the modification of a facility permitted under this subchapter must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification. Amendments and alterations for permits issued under this subchapter are subject to the requirements of Subchapter B of this chapter.

§116.1426. Renewal of Permits Issued Under This Subchapter.

Permits issued under this subchapter shall be renewed in accordance with the requirements of Subchapter D of this chapter (relating to Permit Renewals).

§116.1428. Delegation.

The commission delegates to the executive director the authority to take any action on a permit issued under this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505205
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 25, 2005
For further information, please call: (512) 239-5017

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §331.11

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §331.11.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under the proposed rule, the eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings. Other portions of HB 2201 reflected in the proposed rules define relevant terms, establish an emissions profile, and clarify jurisdiction issues between TCEQ and the Railroad Commission of Texas. Much of the content of the proposed rules originates from new Texas Health and Safety Code (THSC), §382.0565, Clean Coal Project Permitting Procedure, and new Texas Water Code (TWC), §5.558 and §27.022, which were created by HB 2201.

The purpose of the proposed amendment to Chapter 331 is to implement the requirements of HB 2201 with respect to the jurisdiction over injection wells used for the injection of carbon dioxide produced by a clean coal project into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources.

Corresponding rulemakings are published in this issue of the *Texas Register* that includes changes to 30 TAC Chapter 50, Action on Applications and Other Authorizations; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities; and 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification.

SECTION DISCUSSION

§331.11. Classification of Injection Wells.

The proposed amendment would add a new subsection (d) that states that the commission has jurisdiction over the injection of carbon dioxide produced by a clean coal project into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources. This implements new Texas Water Code Section 27.022 from HB 2201. Under federal requirements, Class II injection wells are used for injection

of waste in connection with oil or gas production, enhanced recovery of oil and gas, and storage of hydrocarbons. In Texas, the Railroad Commission regulates Class II injection wells. The commission could not authorize the injection of carbon dioxide produced by a clean coal project for purposes of storage or sequestration into a zone that is below the base of usable quality water and that is not productive of oil, gas or geothermal resources in a Class II injection well. The commission could authorize the injection of carbon dioxide for storage or sequestration in a Class I or Class V injection well depending on site-specific information such as the proposed injection formation and the location of underground sources of drinking water. Class I injection wells are authorized by a permit. Class V injection wells are generally authorized by rule.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period that the proposed rule amendment is in effect, no fiscal implications are anticipated for the agency or other units of state or local government.

The proposed rule implements HB 2201. HB 2201 directs the agency to establish by rule, streamlined permitting procedures for FutureGen projects and specifies jurisdiction over the injection of carbon dioxide produced by a clean coal project. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. The legislature determined that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and determined that streamlining the permitting process for FutureGen projects would serve the public interest by improving the state's ability to compete for federal funding for FutureGen projects. The rule clarifies that the commission has jurisdiction over the injection of carbon dioxide produced by a clean coal project and does not impose any new requirements for the agency.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed amendment is in effect, the public benefit anticipated from the changes due to the proposed rules will be compliance with state law and improving the state's ability to compete for federal funding for FutureGen projects. These projects are anticipated to result in the development of cleaner sources of power to meet energy demands.

The proposed rule specifies jurisdiction of carbon dioxide injection and is not expected to result in any increased costs.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Small or micro-businesses are not expected to apply for permits for FutureGen projects, but if they do, they would experience the same cost savings as large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule is intended to establish procedural requirements for authorizing certain types of projects required for the FutureGen project without holding a contested case hearing. The proposed rule clarifies the commission's jurisdiction over injection wells that inject carbon dioxide produced by a clean coal project into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources. The proposed rule is intended to describe the commission's jurisdiction over these wells and does not alter the underlying technical requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225, definition of "major environmental rule."

Furthermore, the proposed rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rule does not meet any of these applicability requirements. First, the proposed rule is consistent with and does not exceed the standards set by federal law. Second, the proposed rule does not exceed an express requirement of state law, instead the rule implements HB 2201. Third, the rule does not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not propose the rule solely under the general powers of the agency, but rather under the authority of HB 2201, which directs the commission to implement rules under TWC, §27.022, which establishes the commission's jurisdiction over the injection of carbon dioxide produced by a clean coal project to the extent authorized by federal law.

Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether this rulemaking

would constitute a takings under Texas Government Code, Chapter 2007. The proposed rule is intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The proposed rule is only a procedural rule establishing a system to administer the program for permitting FutureGen projects and is not specifically intended to protect the environment or to reduce risks to human health. The proposed rule is intended to provide an alternative mechanism for public participation and does not alter the underlying technical review requirements. Promulgation and enforcement of the rule will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rule also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the proposed rule will not constitute a takings under Texas Government Code, Chapter 2007. The commission invites public comment on this preliminary takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed revisions include procedural mechanisms to authorize new sources of air contaminants; however, the proposed revisions do not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies. The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 20, 2005, at 10:00 a.m. in Building B, Room 201A, at the TCEQ's complex, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing. Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239- 5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-053-091-PR. The proposed rules may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. Comments must be received by 5:00 p.m., December 27, 2005. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under TWC, §27.029, which requires the commission to adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under TWC, Chapter 27. The amendment is proposed under Section 13 of HB 2201, which requires the commission to adopt rules under TWC, §27.022.

The proposed amendment implements TWC, §27.022.

§331.11. Classification of Injection Wells.

(a) - (c) (No change.)

(d) The commission has jurisdiction over the injection of carbon dioxide produced by a clean coal project into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.24

The Texas Department of Public Safety proposes amendments to §15.24, concerning Identification of Applicants.

The proposed amendments are necessary in light of the passage of House Bill 967 during the 79th Legislature, Regular Session. House Bill 967 amended Texas Transportation Code, §521.142 and §522.021 to require the department to accept an offender identification card or similar form of identification issued to an inmate by the Texas Department of Criminal Justice (TDCJ) as satisfactory proof of identity for the issuance of a driver license, commercial driver license or identification certificate.

In the United States, the driver license is the preferred form of personal identification for an overwhelming majority of the population. It is utilized to conduct virtually all types of business transactions as well as to travel. Businesses, government agencies and law enforcement personnel rely on the accuracy of the information contained in the driver license and many times do not have the opportunity or authority to require additional proof of a person's identity.

As reliance on the driver license for identification purposes has expanded, it has become increasingly susceptible to use in the commission of fraud and other criminal activity. The department must continue to take all reasonable steps to ensure the integrity of the driver license and the agency has limited the type of documentation acceptable as proof of identity to items that can be verified by the issuing entity.

According to TDCJ, the offender identification card was initially designed for internal use during the person's incarceration and the identifying information on the card is based solely on the judgment record received from the convicting court. However, the judgment record may not always be accurate and could contain aliases, incomplete names and/or incorrect dates of birth. TDCJ does not utilize other sources to verify or update the identification information, as the document was never intended for external use. It is not anticipated that TDCJ will modify its existing procedures in order to improve the accuracy of the card. As such, the department has determined that it is appropriate to categorize the offender identification card as supporting identification.

Oscar Ybarra, Chief of Finance, has determined that for each fiscal year of the first five-year period that the amendments are in effect, there will be no fiscal implications to state or local government or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period that the amendments are in effect the public benefit anticipated as a result of enforcing the amended rule will be to assist in the positive identification of an applicant for a Texas driver license, commercial driver license or identification certificate. There is no anticipated economic cost to small or large businesses. The cost to individuals who are required to comply with the amendments as proposed will be the standard cost of obtaining a Texas driver license, commercial driver license or identification certificate.

Comments on the proposal may be submitted to Angela Parker, Director of Legal Staff, Driver License Division, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0380, (512) 424-5234, (512) 424-7171 (fax).

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 are affected by this proposal.

§15.24. Identification of Applicants.

All original applicants for a driver license or identification certificate must present proof of identity satisfactory to the department. All documents must be verifiable. There are three categories of documents that may be presented to establish proof of identity.

(1) - (2) (No change.)

(3) Supporting identification. These items consist of other records or documents that aid examining personnel in establishing the identity of the applicant. The following items are not all inclusive. The examining or supervisory personnel may determine that an unlisted document meets the department's needs in establishing identity.

(A) - (K) (No change.)

(L) expired DL or ID issued by another state, territory, District of Columbia or Canadian province that is within two years of the expiration date;[.]

(M) a foreign passport (with or without a United States Visa); [~~or~~]

(N) a consular document issued by a state or national government; or[.]

(O) an offender identification card or similar form of identification issued by the Texas Department of Criminal Justice.

(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 8, 2005.

TRD-200505124
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 25, 2005
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 106. BLIND SERVICES
SUBCHAPTER G. BUSINESS ENTERPRISES OF TEXAS

40 TAC §106.1217

The Texas Health and Human Services Commission proposes to amend Title 40, Part 2, Chapter 106, §106.1217 of the rules of the Department of Assistive and Rehabilitative Services, concerning set aside fees. The amendment is being proposed to bring the Department of Assistive and Rehabilitative Services in compliance with Federal statute (20 U.S.C. 107B(3)) that states that set-aside fees will be collected only to the extent necessary for operation of the Randolph-Sheppard program. We currently have sufficient appropriation approval to operate the program without the collection of the fees.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the amended rule will be in effect, there will be fiscal implications for state or local government. Due to the reduction in set-aside fees collected, there will a decrease in revenues to the Business Enterprises of Texas (BET) program general revenue operating fund account number 492 in the amount of $320,000 annually. This reduction in revenue will result in a corresponding annual drop in the reserve balance in this fund. There is sufficient reserve in the BET operating account so that the drop in balance will have no effect on the operation of BET.

Mr. Wheeler also estimates that for each year of the first five years the amended rule will be in effect, the public benefit anticipated as a result of adopting the proposed amendment will be that blind managers licensed to operate food service and vending facilities in the BET program will realize increased earnings due to the reduction in set-aside fees accessed against the net proceeds of the facilities they operate. There should be no material economic cost to persons who are required to comply with the rule as proposed for amendment. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed amendment will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

This amendment is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies. The proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

No other statute, article, or code is affected by this proposal.

§106.1217. Set-Aside Fees.

(a) Purpose. It is the policy of the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Texas Commission for the Blind~~] to require from managers the payment of a set-aside fee based on the monthly net proceeds of their BET facilities. The purpose of requiring such payment is:

(1) to promote to the greatest possible extent the concept of a manager being an independent business person;

(2) to cause BET to be to the greatest extent possible, with due regard to other considerations, self-supporting;

(3) to encourage and stimulate growth in BET; and

(4) to provide incentives for the increased employment opportunities for blind Texans.

(b) Use of funds. To the extent permitted or required by applicable laws, rules, and regulations, the funds collected as set-aside fees shall be used by the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Commission~~] for the following purposes:

(1) maintenance and replacement of equipment for use in BET;

(2) purchase of new equipment for use in BET;

(3) management services;

(4) assuring a fair minimum return to managers; and

(5) the establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time if it is so determined by a majority vote of managers assigned to a facility, after the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Commission~~] provides to each such manager information on all matters relevant to such proposed purposes.

(c) Method of computing net proceeds.

(1) Net proceeds is the amount remaining from the sale of merchandise of a BET facility, all vending machine income, and other income accruing to the manager from the facility after deducting the reasonable and necessary cost of such sale, but excluding set-aside charges required to be paid by the manager. Net sales are all sales, excluding sales tax. The manager may not remove any items from the inventory or other stock items of the facility unless the manager pays for those items at the actual cost basis.

(2) Costs of sales that may be deducted from net sales to calculate net proceeds in a reporting period shall be limited to:

(A) cost of merchandise sold;

(B) wages paid to employees;

(C) payroll taxes; and

(D) the following reasonable miscellaneous operating expenses that are directly related to the operation of the BET facility:

(i) discretionary expenses, not to exceed 1.5% of the monthly net sales, or $150, whichever is greater;

(ii) rent and utilities authorized in the permit or contract;

(iii) business taxes, licenses, and permits;

(iv) telecommunication services;

(v) liability, property damage, and fire insurance;

(vi) Worker's Compensation insurance;

(vii) employee group hospitalization/health insurance;

(viii) employee retirement contributions (the plans must be IRS-approved and not for the manager);

(ix) janitorial services, supplies, and equipment;

(x) bookkeeping and accounting services;

(xi) trash removal and disposal services;

(xii) service contracts on file with the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Commission~~];

(xiii) legal fees directly related to the operation of the facility (legal fees directly or indirectly related to actions against governmental entities are not deductible);

(xiv) medical expenses directly related to accidents that occur to employees at the facility, not to exceed $500;

(xv) purchase of personally owned or leased equipment that has been approved by the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Commission~~] for placement in the facility;

(xvi) repairs and maintenance to personally owned or leased equipment that has been approved by the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Commission~~] to be placed within the facility;

(xvii) consumable office supplies; and

(xviii) exterminator/pest control services.

(3) All reports by managers shall be accompanied by such supporting documents as may be required by the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Commission~~].

(d) Method of computing monthly set-aside fee. The monthly set-aside fee of each manager shall be a percentage of the amount that results from applying the schedule in paragraphs (1) - (5) of this subsection. The provisions relative to the percentage required to be paid as set-aside fees shall be reviewed by the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Commission~~] with the active participation of the ECM at least annually during the first quarter of each state fiscal year [~~during the regular meeting of the governing board next following the end of the State of Texas fiscal year~~]. The review shall be for the purpose of determining whether the percentage needs to be adjusted in order to meet the needs of the program. The [~~governing board of the Commission and the~~] ECM shall be provided with all relevant financial and other information concerning the financial requirements of the program no fewer than 60 days prior to any review by the Department of Assistive and Rehabilitative Services/Division for Blind Services in which the percentage is to be considered [~~meeting of the Commission's governing board in which a change in the percentage is to be considered~~]. For the period from the effective date of this amended rule until the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Commission~~] undertakes its first annual review of the set-aside fee, the percentage shall be 0 percent [~~25 percent~~].

(1) On net proceeds of $1 to $999.99, the amount shall be 2% of the manager's net proceeds.

(2) On net proceeds of $1,000 to $1,499.99, the amount shall be 3% of the manager's net proceeds.

(3) On net proceeds of $1,500 to $1,999.99, the amount shall be 4% of the manager's net proceeds.

(4) On net proceeds of $2,000 to $5,999.99, the amount shall be $80 plus 18% of the manager's net proceeds over $2,000.

(5) On net proceeds of $6,000 or more, the amount shall be $800 plus 24% of the manager's net proceeds over $6,000.

(e) Payment of set-aside fee. The set-aside fee shall be submitted with the manager's monthly statement of facility operations. The manager shall use "BET Monthly Facility Report, BE-117," to report monthly activities. The BET director shall develop and implement procedures for the preparation and submittal of monthly statements.

(f) Adjustments to monthly set-aside fee.

(1) When a "single point of contact" is required under the provisions of §106.1231 [~~§167.16~~] of this title, pertaining to establishing and closing facilities, the monthly set-aside payment for the contact manager shall be reduced by 3% for each manager represented.

(2) To encourage managers to hire individuals with significant disabilities, managers shall deduct from their set-aside payment up to 50% of the wages or salary paid to a blind or otherwise significantly disabled employee during any month up to an amount not to exceed 5% of the set-aside payment amount for that month. A manager may make this deduction for any number of employees who are individuals who are blind or otherwise significantly disabled so long as that deduction from the set-aside payment amount does not exceed 25% of the total set-aside payment due, or $1,250.00, whichever is less. The manager shall provide such documentation to the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Commission~~] as required by the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Commission~~] to verify such employment and the right to the reduction in set-aside fees. For the purposes of this paragraph, the term "blind or otherwise significantly disabled employee" does not include:

(A) the manager,

(B) a blind or otherwise significantly disabled person within the first degree of consanguinity or affinity to the manager, or

(C) a blind or otherwise significantly disabled person claimed as a dependent, either in whole or in part, on the manager's United States income tax return.

(3) Any adjustments provided for in paragraphs (1) and (2) of this subsection shall not apply for any month in which the set-aside fee is not paid in a timely manner.

(4) To encourage managers to promptly file their monthly statement of facility operations and pay their monthly set-aside fee, managers shall have their monthly set-aside fee increased by 5% if either their monthly statement or the monthly set-aside fee is not timely received by the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Commission~~] in accordance with BET procedures for their preparation and submittal. None of the terms of this rule shall ever be construed to create a contract to pay, as consideration for the use, forbearance, or detention of money, interest at a rate in excess of the maximum rate permitted by applicable laws. This adjustment to the set-aside fee is not imposed as interest, but if for any reason whatever this adjustment is considered to be interest, the Department of Assistive and Rehabilitative Services/Division for Blind Services [~~Commission~~] shall refund to the manager any and all amounts as shall be necessary to cause the "interest" paid to produce a rate equal to the maximum rate permitted by applicable laws.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505207

Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: December 25, 2005
For further information, please call: (512) 424-4050

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. TEXAS BOARD OF HEALTH
SUBCHAPTER A. PROCEDURES AND POLICIES

25 TAC §§1.1, 1.3 - 1.8

The Department of State Health Services withdraws the proposed repeals to §§1.1, 1.3 - 1.8 which appeared in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2648).

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505214
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: November 10, 2005
For further information, please call: (512) 458-7236

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CHAPTER 460. MISCELLANEOUS
SUBCHAPTER A. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION
DIVISION 1. TDMHMR RULEMAKING

25 TAC §§460.1 - 460.8

The Department of State Health Services withdraws the proposed repeals to §§460.1 - 460.8 which appeared in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2651).

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505213
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: November 10, 2005
For further information, please call: (512) 458-7236

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 104. WRESTLING PROMOTERS

1 TAC §104.1, §104.10

The Office of the Secretary of State adopts the repeal of Chapter 104, §104.1 and §104.10, concerning Wrestling Promoters. The repeal is adopted without changes to the proposal as published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6015).

The purpose of the repeal is to implement changes made in Senate Bill 796 enacted in the 79th Regular Legislative Session that eliminated Wrestling Promoter registration. Consequently, Chapter 104 is no longer relevant.

No comments were received regarding the proposed repeal.

The repeal is adopted under the Texas Government Code, §2001.004(1) which provides the Secretary of State with the authority to prescribe and adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505120
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: November 27, 2005
Proposal publication date: September 23, 2005
For further information, please call: (512) 475-0775

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CHAPTER 105. SOLICITATIONS

SUBCHAPTER C. TELEPHONE SOLICITATIONS

1 TAC §105.209

The Office of the Secretary of State adopts an amendment to §105.209, concerning filing fees. The amendment is adopted without changes to the proposed text as published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6015) and the text will not be republished.

The purpose of the amendment is to update the rule to reflect the increase in the fee for official certificates authorized in Senate Bill 1377 which was enacted in the 79th Regular Legislative Session.

No comments were received regarding the proposed amendment.

The amendment is adopted under the Texas Government Code, §2001.004(1) which provides the Secretary of State with the authority to prescribe and adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505121
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: November 27, 2005
Proposal publication date: September 23, 2005
For further information, please call: (512) 475-0775

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 19. PSYCHOLOGISTS' SERVICES

1 TAC §354.1281

The Health and Human Services Commission (HHSC) adopts amended §354.1281, Benefits and Limitations, without changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6158) and will not be republished.

The amended §354.1281, Benefits and Limitations, adds mental health services provided by a licensed psychologist as a benefit available to Medicaid recipients who are 21 years of age or older. Specifically, §354.1281 describes who may deliver psychological services and under what conditions Medicaid will reimburse for those services. The rule is amended by removing subsection (e), which limited Medicaid coverage of psychologists' services to children under the age of 21 years who are eligible for

the Early and Periodic Screening, Diagnosis, and Treatment program. The amendment also replaces the term "department" with "HHSC" to reflect changes made by House Bill 2292, 78th Legislature, Regular Session (2003).

HHSC received comments during the 30-day comment period from the following: Vericare, National Association of Social Workers/Texas Chapter, Texas Association for Marriage and Family Therapy Inc., Mental Health Association in Texas, National Alliance on Mental Illness (NAMI) Texas, Advocacy Incorporated, Texas Mental Health Consumers, six psychologists, five licensed clinical social workers, and three individuals, all in support of the rule. A summary of the comments and HHSC's responses follows.

Comment: HHSC received comments regarding the effective date of the rule from the following: Vericare, National Association of Social Workers/Texas Chapter, Texas Association for Marriage and Family Therapy Inc., Mental Health Association in Texas, NAMI Texas, Advocacy Incorporated, Texas Mental Health Consumers, six psychologists, five licensed clinical social workers, and three individuals. The commenters requested an effective date of November 1, 2005.

Response: HHSC acknowledges the comments regarding an earlier effective date for mental health services. HHSC understands the request to add mental health services provided by a licensed psychologist as a benefit as soon as possible for the Medicaid adult population. HHSC is committed to an effective date of December 1, 2005. This date is the earliest in which all of the necessary components could be modified to accommodate the additional mental health benefit. It is imperative that the benefit is available and that the systems are set up to reimburse providers for mental health services from the date this benefit is made available. For this reason, the mental health benefit for adult Medicaid recipients will be effective December 1, 2005. No change was made to the rule in response to the comments.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505208
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 1, 2005
Proposal publication date: September 30, 2005
For further information, please call: (512) 424-6900

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DIVISION 29. LICENSED PROFESSIONAL COUNSELORS, LICENSED CLINICAL SOCIAL WORKERS, AND LICENSED MARRIAGE AND FAMILY THERAPISTS

1 TAC §354.1381

The Health and Human Services Commission (HHSC) adopts amended §354.1381, Benefits and Limitations, without changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6158) and will not be republished.

The amended §354.1381, Benefits and Limitations, describes the mental health benefits available through Medicaid when a Licensed Professional Counselor (LPC), Licensed Clinical Social Worker (LCSW), or Licensed Marriage and Family Therapist (LMFT) provides these services. The rule is revised by removing subsection (d), which limited mental health services provided by these provider types to children under the age of 21 years who are eligible for the Early and Periodic Screening, Diagnosis, and Treatment program. In addition, references to LMSW-ACP were changed to LCSW and the title was modified to list all of the provider types included in the rule. The amendment also replaces the term "department" with "Health and Human Services Commission" to reflect changes made by House Bill 2292, 78th Legislature, Regular Session, 2003.

HHSC received comments regarding the proposed rule during the comment period from the following: Texas Counseling Association, National Association of Social Workers/Texas Chapter, the Council of Families for Children, Vericare, Texas Association for Marriage and Family Therapy Inc., Mental Health Association in Texas, National Alliance on Mental Illness (NAMI) Texas Chapter, Advocacy, Incorporated, Texas Mental Health Consumers, six psychologists, five licensed Clinical social workers, and four individuals all in support of the rule. HHSC received additional comments below and the response from the Commission follows.

Comment: HHSC received comments regarding the effective date of the rule from the Texas Counseling Association, National Association of Social Workers/Texas Chapter, the Council of Families for Children, Vericare, Texas Association for Marriage and Family Therapy Inc, Mental Health Association in Texas, National Alliance on Mental Illness, Advocacy Incorporated, Texas Mental Health Consumers, six psychologists, five licensed clinical social workers, and four individuals. The commenters requested an effective date of November 1, 2005.

Response: HHSC acknowledges the comments regarding an earlier effective date for mental health services. The HHSC understands the request to add the mental health service benefit as soon as possible for the Medicaid adult population. The HHSC is committed to an effective date of December 1, 2005. This date represents the earliest time possible in which all of the necessary components could be modified to accommodate the additional mental health benefit. It is imperative that the benefit is available and that the systems are set up to reimburse providers for mental health services from the date this benefit is made available. For this reason, the mental health benefit for adult Medicaid recipients will be effective December 1, 2005. No change was made to the rule in response to the comments.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC

with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505209
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 1, 2005
Proposal publication date: September 30, 2005
For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 53. HOME INVESTMENT PARTNERSHIP PROGRAM

10 TAC §§53.50 - 53.58, 53.60 - 53.63

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes, the proposed repeal of §§53.50 - 53.58 and 53.60 - 53.63, concerning the HOME Investment Partnerships Program (HOME), as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5216).

These sections are repealed in order to allow the department to adopt new HOME rules for the 2006 fiscal year.

Public hearings were held across the state between September 26 and October 7, 2005 to receive input on a proposed new rule. In addition to publishing the document in the *Texas Register*, a copy of the rules were published on the Department's web site and made available upon request to the public.

No comments were received.

The repeals are adopted in order to enact new sections conforming to the requirements of regulations enacted by the United States Department of Housing and Urban Development, Chapter 24 Part 92 of the Code of Federal Regulations, which governs the administration of the HOME program.

No other code, article or statute is affected by this proposed repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2005.

TRD-200505229
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2005
Proposal publication date: September 2, 2005
For further information, please call: (512) 475-4595

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10 TAC §§53.50 - 53.62

The Texas Department of Housing and Community Affairs (the Department) adopts new §§53.50 - 53.62, concerning the HOME Investment Partnerships Program (HOME), without change as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5217). These sections are adopted, in order to improve the operation of the program, respond to public input, and improve consistency with other Department rules.

Public hearings were held across the state between September 26 and October 7, 2005 to receive input on this proposed new rule. In addition to publishing the document in the *Texas Register*, a copy of the rules were published on the Department's web site and made available upon request to the public. The Department held thirteen public hearings across the state to gather feedback on the proposed amendments. The Department received no written comment.

The scope of public comment concerning the HOME Rules pertains to the following sections.

§53.53(k) Applicant Requirements (17, 18, 19, 20, 21),

Several localities request that the value of services provided by third-party organizations, including contractors and consultants that go beyond their contractual duties, be considered as eligible match thereby expanding the sources and amounts of matching funds available to smaller, poorer communities.

Department Response: The proposed addition to the rule, §53.53(k), is intended to clarify the federal match and conflict of interest requirements of the HOME Program. The new language does not exclude third-party organizations, such as contractors, consultants, or service providers from providing match as long as the third-party organization is not deriving a monetary benefit from the award. Given that a conflict of interest and/or a monetary benefit may arise from an organization under contract from an award, such procured and/or contractually bound organizations are strictly prohibited from providing match. Additionally, a third-party organization may not provide a portion of their services as match and still derive a monetary benefit from the award. It is important to note that any party providing matching contributions cannot bid or be procured through a selection process by the Administrator of a contract, as this would be considered a conflict of interest and in violation of program rules. Staff believes this new language benefits all applicants and stakeholders, by clarifying the Department's definition and application of the federal rules. No new changes are recommended.

Board Response: Accepted Department's recommendation.

§53.55. Program Activities (3, 7, 15),

A request was made asking that the rules governing Tenant Based Rental Assistance (TBRA) be changed to provide for "transfer of vouchers" in times of crisis like the recent hurricanes.

Department Response: HOME TBRA assistance is portable; the assistance moves with the household. If the household no longer wishes to rent a particular unit, the household may take its assistance and move to another approved rental unit within the Administrator's service area.

In times of natural disasters, the Department may have the ability to consider policy changes to utilize funds in impacted areas. The Department is in the process of seeking waivers from the U.S. Department of Housing and Urban Development (HUD) and is exploring all funding options to better assist displaced households. No change is recommended.

Board Response: Accepted Department's recommendation.

§53.57. Distribution of Funds (4, 16),

A request was made to increase the administrative fees for program Administrators.

Department Response: Staff believes that 4% of the project funds awarded as administrative dollars is sufficient to execute a HOME Single Family contract. In addition to administrative fees, Administrators may access the applicable activity soft costs to assist in administering the Program. Given that soft costs are not eligible to TBRA Administrators, the Department is reviewing the percentage of administrative dollars awarded to this activity. The Department works to provide other forms of assistance to nonprofit administrators, including Capacity Building and CHDO Operating Expenses. No change is recommended.

Board Response: Accepted Department's recommendation.

§53.60. General Selection Criteria (17, 18, 19, 20, 21),

Several localities expressed the desire that Cash Reserves/Bridge Loans not be considered as a scoring criterion in future Single Family HOME Applications, claiming they are never truly utilized by grantees, it is not a HUD requirement, and it places an undue hardship on smaller, poorer communities.

Department Response: Staff annually reviews, and when necessary revises, the various scoring components used to award funding. Staff will consider the necessity of each scoring item when we evaluate the 2006 Single Family HOME Application. No change is recommended for the rule.

Board Response: Accepted Department's recommendation.

General: Provision of Information and Training (1)

A comment was made regarding the administration of the HOME Program. The commenter noted that the Department's website does not provide sufficient information to applicants regarding local Participating Jurisdictions and program requirements and that Department staff, HUD and local officials provide conflicting information in that regard. Comment does request that additional HOME training be provided for rental development applicants.

Department Response: Staff modifies and updates the Department's website, as necessary. Information on Participating Jurisdictions is available on the website under the 2005 HOME Funding Cycle. It is staff's desire for the website to be as useful as possible, and we will reevaluate the information currently available and further elaborate and/or clarify the information presented. The Department also plans to update its training materials and provide quarterly trainings for HOME rental applicants. No change is recommended to the rule.

Board Response: Accepted Department's recommendation.

General: Open Cycles(2)

A comment was made on the use of HOME funds as a supplementary funding source to private activity bond (PAB) financed developments. It was noted that the timing of application processes between PAB and HOME applications creates limitations in terms of filing applications and closings. It was also noted that both programs should continue to be open cycles, and that the Department consider extending the HOME application cycle to a full year, rather than having a closed period.

Department Response: Staff is supportive of finding new ways to layer HOME funds with the Department's other financing tools for at least several months a year. However, closing the HOME rental development cycle is necessary for planning and evaluative purposes for at least a limited period. No change is recommended to the rule.

Board Response: Accepted Department's recommendation.

General : Public Transportation (3, 15)

Speakers requested that TBRA activities consider the location of public transportation as a selection item, especially when serving special needs populations. Speakers also requested that the Department reconsider funding TBRA in Participating Jurisdictions.

Department Response: The Department allows an applicant receiving TBRA assistance the right to choose a dwelling of his or her choice given it meets all applicable codes and standards. The Department feels it is vital that an individual's needs be met, and that all housing options with viable supportive services are available for an individual to rent. Additionally, at the time of application submission, a Contract Administrator does not know which clients will be assisted, or the dwellings they would choose upon receiving rental assistance. It would not be prudent to make transportation a scoring criterion given this unknown.

In prior years, due to concerns about the lack of organizational capacity to serve persons with disabilities in rural areas, TDHCA allowed 5% of its HOME allocation to be awarded to applicants in PJs. Based on the increase in capacity of organizations in non-PJ areas as evidenced by an oversubscription rate in the 2004 and 2005 application cycles for single family activities, TDHCA will no longer fund single family activity applications in PJ areas. No change is recommended to the rule.

Board Response: Accepted Department's recommendation.

General: Increase in Owner Occupied Rehabilitation (OCC) Per Unit Subsidy (6)

Speaker requested the Department to consider an increase in the per-unit maximum in the Owner Occupied Rehabilitation program to $65,000 or $70,000. Speaker noted that construction materials are increasing rapidly and that the current level of subsidy is not sufficient.

Department Response: The Department is currently considering revisions to the per unit maximum in the Owner Occupied Housing Assistance activity based on research being conducted on construction and material costs across the state. Any changes will be made through the Department's HOME Program Guidelines. No change is recommended to the rule.

Board Response: Accepted Department's recommendation.

General: TBRA Voucher Duration (7)

Speaker commented that the duration of a TBRA voucher is not long enough to assist a household in becoming self-sufficient or receiving Section 8 assistance.

Department Response: In accordance with the HOME federal program rules, TBRA may only be a source of temporary housing assistance. The Department currently allows an individual to receive up to 24 months of rental assistance under a Contract Administrator's TBRA contract. The term of 24 months of assistance is a federally mandated timeline. The Department feels this is a sufficient amount of time to find more permanent housing and complete a self-sufficiency program required when receiving TBRA assistance. Contract Administrators have the option of reapplying for TBRA funds, and have the ability to serve the same household for an additional 24months. It should be noted that TBRA funds are highly competitive, and a Contract Administrator should never rely on receiving an award. No change is recommended to the rule.

Board Response: Accepted Department's recommendation.

General: Match Requirements (5, 13, 14, 17, 18, 19, 20, 21)

Comment was received on match requirements for Administrators. Commenters noted that nonprofits and smaller entities are placed at a disadvantage in competitive programs because of the current match requirement in Single Family HOME programs.

Department Response: Each year, HUD determines if a state is economically distressed, and reduces the match requirement for these states. Texas has historically been classified as an economically distressed state and is only required to report 12.5%, rather than 25%, of the annual allocation in matching funds. The Department realizes the difficulty for any applicant to provide matching funds, much less the smaller, less prosperous municipalities and nonprofits. The Department understands match is a sensitive issue. The Department is actively taking measures to ensure a level playing field exists. The Department has strived in years past to remedy the possible inequities and is currently in the process of reviewing these scoring criteria for the 2006 Single Family HOME Funding Cycle. No change is recommended to the rule.

Board Response: Accepted Department's recommendation.

General: Regional Allocation of Community Housing Development Organization (CHDO) Funds (9, 11)

Speakers requested that the HOME CHDO program consider regionally allocating funds to ensure that rural regions are equally represented in funding awards.

Department Response: The Department finds that regionally allocating funding through the HOME CHDO program will limit its effectiveness and reduce our ability to fully allocate these funds. Applicants are welcome to apply for funding through the open cycle process, which allows for small rural applicants to respond to development opportunities within their communities. It should be noted that the Department is limited by state statute from awarding HOME funds to local Participating Jurisdictions, which are predominately urban areas. The CHDO NOFA has also been under subscribed for the past two years, and the Department is working hard to find qualified applicants for this program. No change is recommended to the rule.

Board Response: Accepted Department's recommendation.

Based on the above comments, no change to the rule is proposed. The rule attached for adoption is identical to the rule taken out for public comment. All black lining reflects the revisions originally proposed to the rule prior to it release for comment.

Board Response: Department's response accepted.

List of Commenters

Number 1: Churchill Residential

Number 2: Churchill Residential

Number 3: Ability Resources Inc.

Number 4: Latino Education Project

Number 5: Nueces County Community Action Agency

Number 6: Langford Community Management Services

Number 7: Accessible Communities, Inc.

Number 8: Nueces County Community Action Agency

Number 9: City of Midland

Number 10: Midland CDC

Number 11: Big Spring Housing Authority

Number 12: Heart of Central Texas

Number 13: Ramond K. Vann and Associates

Number 14: City of Crockett

Number 15: Accessible Communities, Inc.

Number 16: Webb County Self-Help Center

Number 17: City of Falurrias

Number 18: City of Toyah

Number 19: City of Goldsmith

Number 20: Colorado County Judge

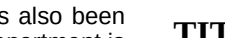
Number 21: Matagorda County Judge

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2005.

TRD-200505230
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2005
Proposal publication date: September 2, 2005
For further information, please call: (512) 475-4595



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.3, §21.4

The Texas Higher Education Coordinating Board adopts amendments to §21.3 and §21.4 concerning Loan Repayment Deferral and Loan Forgiveness for Emergency Tuition and Fee Loans Made under Texas Education Code §56.051 and the Collection of Tuition, with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5481). Senate Bill 1227, 79th Legislature, Regular Session, amended Texas Education Code §54.051 and §54.052, changing the state's emergency tuition and fee loan program. The emergency loan program is funded through authorized set-asides from the Texas Public Educational Grant Program (Texas Education Code, §56.033). Specifically, §21.3 indicates the emergency loan funds may be used to pay for books as well as tuition and fees and that institutions may select loan recipients based on the student financial need. Senate Bill 1227, 79th Legislature, Regular Session, amended Texas Education Code §56.051 regarding the payment due date for tuition and fees. Specifically, new §21.4 reflects the fact that the regular payment due date does not apply if the student has financial aid pending and the student has signed an agreement for the aid, when received, to first be applied to cover outstanding tuition and fee charges. Furthermore, the section indicates procedures institutions are to follow if the aid, when received, is insufficient to cover unpaid charges.

The following comment was received regarding the amendments:

Comment: Texas A&M University commented that it was unclear how an institution would determine that a student's aid had been delayed and thus make a student eligible for the postponement of tuition and fee payment. They asked what proof the student would have to provide to qualify for the postponement.

Response: The Board has changed §21.4 to clarify that financial aid is to be considered "delayed" if it has been awarded by the financial aid office but not yet disbursed to the school for the student by the due date for tuition and fee payment. The institution should be able to obtain the appropriate information from its own records and should not require additional proof from the student.

The amendments are adopted under the Texas Education Code, §56.055, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.051 - 56.055 and §54.0071.

§21.3. Loan Repayment Deferral and Loan Forgiveness for Emergency Loans for Tuition, Fees and Books Made Under Texas Education Code, §56.051.

(a) An institution shall defer the repayment of emergency loans for tuition, fees and books, in accordance with guidelines adopted by the governing board of the institution. The deferred repayment, however, must begin on the earlier of the following dates: the first day of the ninth month after the last month in which the borrower was enrolled in a public institution of higher education, or the fifth anniversary of the date on which the loan was executed. An institution may extend the time for repayment of loans for students who enroll in graduate or professional degree programs for up to three years, but not longer than one year beyond the time when the student fails to be enrolled in the institution on at least a half-time basis.

(b) An institution shall forgive an emergency loan to an individual who has been certified by a physician as being physically or mentally incapable of employment, resulting in a financial hardship that would make repayment infeasible. The physician's certification would need to indicate that the individual's extreme financial hardship condition is expected to continue and would likely make repayment infeasible for the succeeding five years.

(c) An institution shall maintain documentation justifying the deferral of repayments or the forgiveness of emergency loans for review by the State Auditor.

§21.4. Collection of Tuition.

(a) Unless a student's payment due date has been postponed due to pending disbursements of financial aid as described in Subsection (b), of this section, the following conditions shall apply in the collection of tuition and/or tuition and fees at institutions of higher education and in the conducting of enrollment audits.

(1) On or before the dates for reporting official enrollments to the Texas Higher Education Coordinating Board each enrollment period, each community college shall collect in full from each student that is to be counted for formula funding purposes the amounts set as tuition by the respective governing boards.

(2) On or before the 20th class day for each regular semester and the 15th class day for each summer session, institutions other than community colleges shall collect from each student who is to be counted for state formula funding appropriations, the tuition and fees (mandatory and optional) established by state law or by the respective governing boards.

(3) Valid contracts with the United States government for instruction of eligible military personnel, approved financial assistance, and valid contracts with private business and public-service type organizations or institutions such as hospitals, may be considered as collected tuition and fees; the amount of collected tuition and fees may be adjusted pursuant to terms of the contract once actual collections are made.

(4) Returned checks must be covered by a transfer from a self-supporting auxiliary enterprise fund or other non-state fund source (e.g., food service, bookstore) within ten days of the date the institution receives the returned check in order for contact hours to be presented to the state for funding.

(5) Auxiliary enterprise or other non-state fund sources may not be reimbursed with state-provided funds.

(6) Institutions must retain records of individual student tuition or tuition and fee payment and returned checks for verification by the State Auditor.

(b) Payment Options for Students with Delayed Financial Aid.

(1) If an institution's financial aid office has awarded aid to a student but the institution has not received the relevant disbursements by the date that tuition and fees must be paid, the student's aid is delayed. If the student agrees to assign to the institution a portion of the awards equal to the amount of tuition and fees to be met with financial aid payments, the governing board may postpone the due date for the portion of the tuition and or tuition and fee payment that will be met through financial aid funds and the hours to be paid for with the financial aid may be counted for formula funding purposes.

(2) If, after the student's due date is postponed, the student becomes ineligible to receive one or more of the pending financial aid awards or the award amount is less than the amount of tuition and fees due, the governing board is to grant the student a repayment period for the unpaid amount that:

(A) does not exceed 30 days,

(B) allows for multiple payments, if necessary, and

(C) entails a processing fee not to exceed 5 percent of the total amount to be collected.

(3) An institution may deny academic credits for hours completed in the semester or term if the student fails to pay the full tuition and fee amount by the end of the 30-day repayment period.

(c) A student paying tuition and fees by installments shall be granted the options of delayed payment outlined in Subsection (b) of this section (relating to Payment Options for Students with Delayed Financial Aid) if he or she is awaiting the disbursement of financial aid.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER B. DETERMINING RESIDENCE STATUS

19 TAC §21.23

The Texas Higher Education Coordinating Board adopts amendments to §21.23 concerning Determining Residence Status, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5482). Specifically, the amendment would allow employees of the Department of Defense, the U.S. Armed Forces, and the Public Health Service who entered their service as residents of Texas to retain their residency status even though they may be required to remain out of state for more than five years. By statute, these persons are entitled to automatic admissions if they graduate in the top 10 percent of a Department of Defense high school and are eligible to receive loans through the B-On-Time Student Loan Program.

No comments were received regarding the amendments.

The amendment is adopted under the Texas Education Code, §54.053, which provides the Coordinating Board with the authority to issue rules, regulations and interpretations with respect to resident status.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §§21.53 - 21.56, 21.58, 21.62

The Texas Higher Education Coordinating Board adopts amendments to §§21.53, 21.54, 21.55, 21.56, 21.58, and 21.62 concerning the Hinson-Hazlewood College Student Loan Program, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5483). Texas Education Code, §52.31 and §52.32, was amended by Senate Bill 1227, 79th Texas Legislature, to permit additional institutions or entities to participate in the program, to change the eligibility requirements for borrowers under the program and to increase the period of time for repayment. In addition to the changes required by statute, the amendments provide additional definitions and require that the loan amount be tied to the annual cost of attendance. Specifically, the amendment to §21.53 (Definitions) adds definitions for approved Alternative Educator Certification Program, Regional Education Service Center, and Cost of Attendance. The amendment to §21.54 (Participating Institutions) permits entities, such as Regional Education Services Centers that offer Alternative Educator Certification Programs, to participate in the program. The amendments to §21.55 (Eligibility of Students) clarify the qualifications of students enrolled in career schools and colleges and removes the outdated and unnecessary requirement for a spouse's signature on the promissory note for a married borrower. The amendment to §21.56 (Requirements of Cosigner/Accommodation Party) removes the outdated and unnecessary requirement for a spouse's signature on the promissory note for a married cosigner. The amendments to §21.58 (Amount of Loan) and §21.62 (Repayment of Loans) are proposed in response to the need for increased loan limits to meet current costs of higher education and to set loan terms that are consistent with general practice by issuers of student loans.

No comments were received regarding the amendments.

The amendments are adopted under Texas Education Code, §52.01, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §52.01 and §§52.31 - 52.40.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §21.122, §21.124

The Texas Higher Education Coordinating Board adopts amendments to §21.122 and §21.124 concerning loan forgiveness for Texas B-On-Time loans, without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4530). The amendments permit certain military dependents that are entitled to pay resident tuition rates to receive a B-On-Time loan. Currently, loan eligibility is limited to students who are Texas residents and who graduated from a Texas high school. The amendments provide that a military dependent who graduated from a Department of Defense high school not earlier than the 2002 - 2003 school year and who, at the time of graduation, was a dependent of a member of the U.S. armed forces, is eligible for the Texas B-On-Time loan.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.451 - 56.465, which provides the Coordinating Board authority to establish procedures to administer this program; the Texas Education Code, §61.027, which provides the Coordinating Board authority to adopt rules to effectuate the provisions of the Texas Education Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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19 TAC §21.129

The Texas Higher Education Coordinating Board adopts an amendment to §21.129 concerning loan forgiveness for Texas B-On-Time loans, with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5485). Specifically, the amendment provides that the following course hours shall be excluded in counting course hours for purposes of loan forgiveness requirements: credit earned by examination, dual-credit course hours, and hours earned for developmental coursework that an institution required the student to take under Texas Education Code, §51.3062, or under the former provisions of Texas Education Code, §51.306.

The following comments were received regarding the amendments.

Comment: Stephen F. Austin University and Texas A&M University commented that the legislative change does not exclude transfer hours from the calculation for loan forgiveness.

Response: The Board agreed with this comment and §21.129(2) has been changed to include transfer hours when calculating the number of hours counted toward loan forgiveness.

The amendment is adopted under the Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

§21.129. Forgiveness of Loans.

A Texas B-On-Time loan shall be forgiven if the student is awarded an undergraduate degree or certificate from an eligible institution, and the student either:

(1) graduated with a B average, or the equivalent of a cumulative grade point average of at least 3.0 on a four-point scale, and received:

(A) a baccalaureate degree within four calendar years after the date the student initially enrolled in an eligible institution;

(B) a baccalaureate degree within five calendar years after the date the student initially enrolled in an eligible institution, if the degree is in architecture, engineering, or any other program determined by the Board to require more than four years to complete;

(C) a degree or certificate from a two-year program within two calendar years after the date the student initially enrolled in an eligible institution

(D) a certificate from a one-year program within one calendar year after the date the student initially enrolled in an eligible institution; or

(2) graduated with a B average, or the equivalent of a cumulative grade point average of at least 3.0 on a four-point scale, with a total number of course credit hours, including transfer credit hours and hours earned exclusively by examination, and excluding dual credit course hours, and hours earned for developmental coursework that an institution required the student to take under Texas Education Code, §51.3062 (relating to Success Initiative), or under the former provisions of Texas Education Code, §51.306 (relating to Texas Academic Skills Program), that is not more than:

(A) six hours more than the number of credit hours required to complete a two-year certificate or a baccalaureate degree; or

(B) three hours more than the number of credit hours required to complete a one-year certificate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. TEXAS COLLEGE WORK-STUDY PROGRAM

19 TAC §§21.401 - 21.404

The Texas Higher Education Coordinating Board adopts amendments to §§21.401 - 21.404 concerning the Texas College Work-Study Program, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5486). Senate Bill 1227 and House Bill 1172, 79th Legislature, Regular Session, amended Texas Education Code §56.076 and §56.079, changing several provisions of the Texas College Work-Study Program. Specifically, §21.402 provides definitions for terms that are used in this subchapter. §21.403 mentions the new mentorship program, requires institutions to notify the Board if their accrediting agency places them on probation, and establishes penalties for institution that fail to return unused work-study funds to the Board in a timely manner. §21.404 describes the eligibility requirements for students who are employed in the general work-study program or the new mentorship program, and §21.405 describes the students who may receive mentoring through the new program.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.077, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.071 - 56.079.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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19 TAC §§21.405 - 21.408

The Texas Higher Education Coordinating Board adopts the repeal of §§21.405 - 21.408, concerning the Texas College Work-Study Program, without changes to the proposal as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5488).

Specifically, these sections are being repealed and new §§21.405 - 21.411 are being adopted simultaneously.

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, §56.077, which provides the Coordinating Board with the authority to adopt any rules necessary to enforce the requirements, conditions and limitations of Texas Education Code, §§56.071 - 56.079.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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19 TAC §§21.405 - 21.411

The Texas Higher Education Coordinating Board adopts new §§21.405 - 21.411, concerning the Texas College Work-Study Program, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5488).

Senate Bill 1227 and House Bill 1172, 79th Legislature, Regular Session, amended Texas Education Code §56.076 and §56.079, changing several provisions of the Texas College Work-Study Program. Specifically, §21.405 identifies the students who may receive mentoring through the new mentorship program. Section 21.406 describes the eligibility requirements for entities that employ students through the general work-study program and the mentorship program. Section 21.407 indicates that when awarded, a person's work-study award may not exceed his or her financial need, that funds received through the work-study program must be used to meet the costs related to attending college, and that the Board will allow a limited portion of a student's award to be used in his or her training to function as a mentor. Section 21.408 describes the process of allocating and reallocating funds among participating institutions. Section 21.409 affirms the Board's responsibility in disseminating information and rules for the program. Section 21.410 identifies the data elements that institutions will have to report to the Board regarding the participants in the mentorship program and the success of the program. Section 21.411 reflects the ability of institutions to transfer the lesser of 10 percent or $10,000 between the Tuition Equalization Grant Program, Toward EXcellence, Access and Success Grant Program and the Texas College Work-Study Program.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §56.077, which provides the Coordinating Board with the authority to adopt any rules necessary to enforce the requirements, conditions and limitations of Texas Education Code, §§56.071 - 56.079.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER X. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.727 - 21.735

The Texas Higher Education Coordinating Board adopts new §§21.727 - 21.735, concerning Determination of Resident Status and Waiver Programs for Certain Nonresident Persons. Sections 21.727, 21.728, 21.730 - 21.733, and 21.735 are adopted with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5490). Section 21.729 and §21.734 are adopted without changes to the proposed text as published.

Senate Bill 1528, 78th Texas Legislature, Regular Session, enacted Texas Education Code, §§54.0501 - 54.075, establishing new parameters to determine if a person is a Texas resident for tuition purposes at institutions of higher education. These new sections implement those parameters, significantly simplifying the process for a majority of students attending those institutions. Specifically, new §21.728 provides definitions for terms that are used in this subchapter and §21.729 provides that the new sections shall be applied beginning with enrollments for the Fall Semester 2006. Section 21.730 sets out a relatively simple method for classification as a Texas resident by showing residence in the state for 36 months leading to high school graduation, or the receipt of the graduation equivalency diploma, and continuous residency in the state for 12 months prior to the census date of the semester in which the student seeks to enroll. For a person who cannot qualify under this provision, this section provides that, in order to be classified as a Texas resident, the person must have established a domicile in Texas more than 12 months before the census date and have maintained a residence in Texas continuously for the 12 months preceding the census date. Section 21.730 also lists those persons, in addition to U.S. citizens, who, under federal law, are permitted to establish a domicile. To initially establish resident status, a person may only be asked certain "core" questions and, under §21.731, the institutions are required to determine residency based solely on answers to these "core residency questions" and supporting documents, if required. Section 21.732 provides that a person who was classified as a Texas resident for any part of the FY 2006 state fiscal year will not be affected by these new sections. Importantly, this section also provides that any person classified as a Texas resident under these rules maintains that status, even if the person transfers to another institution, unless the person has been out of school for as much as two regular semesters. A person is required, however, under §21.733, to provide additional or changed information which may affect his or her resident or nonresident tuition classification to the institution. If the failure to provide such information results in the payment of resident tuition by a person who is not entitled to do so, the person will be liable to the institution for the difference in tuition. The waiver programs under which nonresident persons pay Texas resident tuition have been revised in §21.735. Some changes were made to align the programs with the statutory provisions. For example, §21.735(5)(B), clarifies that a person who resides in any state may pay a lowered nonresident tuition at a general academic teaching institution located within 100 miles of the Texas border, if the institution meets certain criteria. The waiver program for ROTC Members is excluded from the list of waiver programs because there is no statutory authority for that waiver of nonresident tuition.

The following comments were received regarding the new sections:

Comment: Tarrant County College suggested the definition of "Census date" in §21.728 should not include the words "to the Board" because flex entry classes are not reported to the Board until the semester following the term in which they are taken (due to their delayed starting date).

Response: The Board agreed with this comment, and §21.728 has been changed as a result of this comment.

Comment: The University of Texas System Office suggested that references to "Texas resident" be changed to "Texas resident for tuition purposes" in §21.728(3) regarding Definitions (definition of Core Residency Questions), §21.731(a) and (d) regarding Information Required to Initially Establish Resident Status, §21.732(c) regarding Continuing Resident Students, and §21.734(b) regarding Reclassification Based on Additional or Changed Information.

Response: The Board does not recommend that changes be made as a result of this comment because classification as a resident impacts not only the tuition rate to be paid by a student, but also his or her eligibility for state financial aid.

Comment: The University of Texas System Office suggested the addition of definitions for "Established a Domicile in Texas" and "Residence" to §21.728 for use in describing the conditions for establishing residency. The suggested definition of "Established a Domicile in Texas" included a list of actions that would document the establishment of a domicile.

Response: The Board agreed with this comment and added definitions for "Established a Domicile in Texas" and "Residence" to §21.728. The list of actions for establishing a domicile has been included in §21.730(d).

Comment: The University of Texas System Office suggested the introductory line to §21.730(a) be changed from simply indicating certain persons shall be entitled to pay resident tuition to also indicating they shall be classified as Texas residents.

Response: The Board agreed with this comment and changed the introductory line of §21.730(a) to state that the persons shall be classified as Texas residents.

Comment: The University of Texas System Office suggested the word "immediately" be inserted in §21.730(a)(1)(B)(i).

Response: The Board agreed with this comment and §21.730(a)(1)(B)(i) has been changed to insert this word.

Comment: The University of Texas System Office suggested §21.730(a)(2)(B) and (3)(B) be changed from "maintain a residence continually" to "maintain a domicile continuously."

Response: The Board agreed with this comment and changed the term "continually" to "continuously" but did not recommend that the term "residence" be substituted for the term "domicile." The requirement to establish a domicile is described in §21.730(a)(2)(A) and (3)(A), and the emphasis at this point in the rules is on the person's physical presence in the state during the 12 months prior to enrollment.

Comment: The University of Texas System Office suggested that §21.730 should require the establishment of a domicile and the maintenance of that domicile for at least 12 months.

Response: The Board recognizes that the basis of a domicile is a single act, such as the purchase of property or a business or acquisition of a license to conduct business and that those acts should occur at least 12 months prior to the census date of the student's enrollment and continue through the date of enrollment. The Board also recognizes that a lease of real property and gainful employment must occur within the 12 months prior to enrollment. However, the Board does not recommend that any change be made to §21.730 as a result of this comment because changes recommended to Parts A, B and C of Chart IV, which is incorporated into §21.731(b), clarify the temporal relationships of the required actions.

Comment: The University of Texas System Office suggested the use of the term "non-U.S. citizens" in the lead sentence of §21.730(b).

Response: The Board agreed with this comment and §21.730(b) has been changed as a result of this comment.

Comment: The Mexican American Legal Defense and Educational Fund and the University of Houston suggested §21.728(6) and §21.730(b)(2) be changed to specifically describe the immigration status of eligible Permanent Resident applicants.

Response: The Board agreed with this comment and §21.728(6) and §21.730(b)(2) have been changed to specifically describe the immigration status of an eligible applicant.

Comment: The Mexican American Legal Defense and Educational Fund suggested a correction in capitalization and an addition to §21.730(b)(6). Previously, the section dealt with persons who have filed an application for cancellation of removal or adjustment of status under the Nicaraguan and Central American Relief Act (NACARA), the Haitian Refugee Immigrant Fairness Act (HRIFA), or the Cuban Adjustment Act who have been issued a fee/filing receipt or Notice of Action by the U.S. Citizenship and Immigration Services. The Mexican American Legal Defense and Educational Fund suggested the name of the form be capitalized, and the addition of persons who have filed an application for Cancellation of Removal or Adjustment of Status under the Immigration Nationality Act 240(A)(b).

Response: The Board agreed with this comment and §21.730(b)(6) has been changed as a result of this comment.

Comment: The University of Texas System Office suggested that the citation for the Special Immigrant Juvenile Program--8 USC 1101(a)(27)(J)--be added to §21.730(b)(7).

Response: The Board agreed with this comment and added the citation to §21.730(b)(7).

Comment: The University of Texas System Office suggested that the phrase "that he or she is a domiciliary of this state" be substituted for "resident status."

Response: The Board agreed with this comment and §21.730(e) has been changed as a result of this comment.

Comment: The University of Texas System Office suggested that the phrase "or for educational purposes" be added to §21.730(e) to clarify that persons who are out of the state for educational purposes may continue to claim that he or she is a domiciliary of this state.

Response: The Board agreed with this comment and §21.730(e) has been changed to add this phrase.

Comment: A commenter pointed out that §21.731(b) included the word "attached" twice.

Response: The Board agreed with this comment and §21.731(b) has been changed to delete the duplicated word.

Comment: Texas A&M University commented that the cross-reference to §21.730(a) in §21.731(c) should have been limited to §21.730(a)(1).

Response: The Board agreed with this comment and the reference has been changed from §21.730(a) to §21.730(a)(1).

Comment: The University of Texas System Office commented that the definition of "gainful employment" in §21.731(a) and the inclusion of leased property as a basis for establishing domicile in §21.733(a) would cause additional students to qualify to pay the resident tuition rate.

Response: The Board does not recommend that these sections be changed as a result of this comment. The proposed definition of "gainful employment" is the same as the current definition, and the Board does not believe it will increase the number of residents. In addition, the Board believes it is important to recognize the vagaries of the current job market and the variety of circumstances under which people come to Texas. By including the leasing of real property as a basis of establishing a domicile, more students may be able to establish residency after residing in the state for at least a year, but it is important to include this option for less wealthy persons who come to the state and are not in a position to purchase real property or businesses. In order to increase the validity of this approach to establishing a domicile, Part B of Chart IV, which is incorporated into §21.731(b), has been changed to indicate that if leasing is used as the approach to establish a domicile, the individual must also accomplish three of the steps listed in Part D in order to demonstrate 12 months in the state.

Comment: The University of Texas System Office suggested language for §21.732(b) and (c) to simply indicate a person's previous classification would apply at any institution and that if an individual is out of school for as much as two regular semesters, he or she will have to satisfy all the requirements for establishing resident status.

Response: The Board agreed with this comment and §21.732(b) and (c) have been changed as a result of this comment.

Comment: The University of Texas System Office suggested the use of the verb "reclassify" in §21.733(a) and (c) when discussing the change of status from resident to nonresident or vice versa.

Response: The Board agreed with this comment and §21.733(a) and (c) have been changed as a result of this comment.

Comment: The University of Texas System Office suggested that the circumstances that entail an "erroneous classification" in §21.734 be clarified so the requirement to reimburse students who have been improperly billed as nonresidents can be de-

termined. The suggested wording would limit restitution to circumstances when a student specifically asked for reclassification and is denied.

Response: The Board does not recommend that this section be changed as a result of this comment. The intent is for students to be refunded excess tuition if the information they provide their institution is incorrectly interpreted and they are improperly classified as nonresidents. The goal is to give the student the same ability to obtain a refund as the institution has when the student is erroneously classified as a resident. An error made when the student first applies for admission, if discovered when the student later applies for reclassification, should still be subject to restitution for the student.

Comment: A commenter pointed out that subparagraphs (H) and (J) of §21.735(10) were wrongly lettered. They should be subparagraphs (G) and (H).

Response: The Board agreed with this comment and §21.735(10) has been changed to make this correction.

Comment: The University of Texas System Office suggested the use of the term "Non-immigrant alien" rather than "Foreign persons" in the description of NATO Forces in §21.735(10).

Response: The Board agreed with this comment and §21.735(10)(G) has been changed as a result of this comment.

Comment: A commenter suggested that more instructions regarding the name of the institution previously attended by the student be provided in Chart II, Part B (2), which is incorporated into §21.728(3).

Response: The Board agreed with this comment and Chart II, Part B (2), which is incorporated into §21.728(3), has been changed to add instructions that the student is to give the full name of the public Texas institution, not just its initials.

Comment: A commenter suggested more concise language for Chart II, Part B (4), which is incorporated into §21.728(3), to clarify the question.

Response: The Board agreed with this comment and Chart II, Part B (4), which is incorporated into §21.728(3), has been changed as a result of this comment.

Comment: The University of Texas suggested that Chart II, Part B, which is incorporated into §21.728(3), ask whether or not the student paid the resident tuition rate due to classification as a resident or as a result of a waiver of nonresident tuition and require the student to provide his or her receiving institution information about the receipt of a waiver at the previous institution.

Response: The Board agrees and question 5 has been added to Chart II, Part B, which is incorporated into §21.728(3), with the expectation that the receiving institution will still need to check the previous classification of all students claiming to have been classified as a resident.

Comment: The University of Texas System Office suggested the use of the term "physically reside" in Chart II, Part D and Part F, which is incorporated into §21.728(3), rather than the term "lived."

Response: No changes were made as a result of this comment because the term "lived" is simpler and easily understood.

Comment: A commenter suggested the conditions under which an individual is eligible to be claimed as a dependent for federal income tax purposes be clarified in Chart II, Part E (2), which is incorporated into §21.728(3).

Response: The Board agreed with this comment and Chart II, Part E (2), which is incorporated into §21.728(3), has been changed as a result of this comment.

Comment: A commenter pointed out that no instruction had been provided for persons answering "no" to (1) and (2) and "other" to question (3) of Chart II, Part E, which is incorporated into §21.728(3).

Response: The Board agreed with this comment and Chart II, Part E, which is incorporated into §21.728(3), has been changed to add an instruction for this situation.

Comment: The Mexican American Legal Defense and Educational Fund and the University of Houston suggested a change in Chart II, Part F (2) and Part G (2), which is incorporated into §21.728(3), to clarify what documentation a person must have to prove that his or her application for Permanent Resident Status has been approved.

Response: The Board agreed with this comment and Chart II, Part F (2) and Part G (2), which is incorporated into §21.728(3), has been changed as a result of this comment.

Comment: A commenter pointed out that question 7 of Part F and question 7 of Part G of Chart II, which is incorporated into §21.728(3), did not correspond with the documentation outlined in Chart IV, which is incorporated into §21.731(b).

Response: The Board agreed with this comment and changed question 7 in both Part F and G, added questions 8 and 9 to Part F, and added question 8 to Part G to more directly correspond to Chart IV, which is incorporated into §21.731(b).

Comment: A commenter asked how an individual who was temporarily out of the state due to an employment assignment would indicate this in Chart II, which is incorporated into §21.728(3).

Response: The Board agreed and questions F4 and G4 of Chart II, which is incorporated into §21.728(3), have been changed to include instructions to provide an explanation in Part H if the person or the person's parent currently does not live in the state due to a temporary employment assignment out of state.

Comment: A commenter pointed out an error in Item 4 of Chart III, which is incorporated into §21.731(c), the Affidavit, in which the phrase "have resided or will have registered" should have been "have resided or will have resided."

Response: The Board agreed with this comment and changed item 4 of Chart III, which is incorporated into §21.731(c), as a result of this comment.

Comment: A commenter suggested Item 5 of Chart III, which is incorporated into §21.731(c), the Affidavit, would read better if the opening clauses were reversed, with the present tense given prior to the future tense.

Response: The Board agreed with this comment and Item 5 of Chart III, which is incorporated into §21.731(c), has been changed as a result of this comment.

Comment: The Residency Advisory Committee recommended a reorganization of the information provided in Chart IV, which is incorporated into §21.731(b). It recommended dropping the first "Support" in the Chart's title. It also suggested that the documents for supporting the establishment of a domicile could be broken down into three types: stand-alone actions that meet

both the action and the durational requirements to establish a domicile; leasing for 12 months, which requires an additional three actions showing ties to the state; and single domiciliary actions that need to be accompanied by evidence of 12 months' residence in the state.

Response: The Board agreed with this comment and changed the name of Chart IV which is incorporated into §21.731(b), and split Part A of Chart IV into three parts, as suggested by the committee.

Comment: The Residency Advisory Committee suggested the title of Part B of Chart IV, which is incorporated into §21.731(b) (renumbered as Part D due to the split of Part A as described above), be changed to indicate that the list is a list of documents that demonstrate the maintenance of a residence, rather than establish the maintenance of a residence.

Response: The Board agreed with this comment and the name of Part B of Chart IV, which is incorporated into §21.731(b) (renumbered as Part D due to the split of Part A as described above), has been changed.

Comment: The Residency Advisory Committee pointed out that a property tax receipt--previously listed as Part B (1)--does not reflect a 12-month period and that the lease of property (previously listed as Part B (8)) had been included both in Part A and in Part B of the original chart.

Response: The Board agreed and Item 1 (property tax receipt) and Item 8 (lease of real property) have been deleted from Chart IV, which is incorporated into §21.731(b).

The new sections are adopted under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

§21.727. Authority and Purpose.

Texas Education Code, §54.075, requires the Board to adopt rules to carry out the purposes of Texas Education Code, Subchapter B, concerning the determination of resident status for tuition purposes.

§21.728. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Census date--the date in an academic term for which an institution is required to certify a person's enrollment in the institution for the purposes of determining formula funding for the institution.

(2) Coordinating Board or Board--the Texas Higher Education Coordinating Board.

(3) Core Residency Questions--the questions promulgated by the Board and described in Chart II, which is incorporated into this subchapter for all purposes, to be completed by a person and used by an institution to determine if the person is a Texas resident.

(4) Dependent--a person who:

(A) is less than 18 years of age and has not been emancipated by marriage or court order; or

(B) is eligible to be claimed as a dependent of a parent of the person for purposes of determining the parent's income tax liability under the Internal Revenue Code of 1986.

(5) Domicile--a person's principal, permanent residence to which the person intends to return after any temporary absence.

(6) Eligible for Permanent Resident Status--a person who has filed an I-485 application for permanent residency and has been issued a fee/filing receipt or notice of action.

(7) Established a domicile in Texas--a person has established a domicile in Texas if he or she has met the conditions shown in §21.730(d) of this title (relating to Determination of Resident Status).

(8) Eligible Nonimmigrant--a person who has been issued a type of nonimmigrant visa by the USCIS that permits the person to establish a domicile in the United States.

(9) Gainful employment--lawful activities intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care or the maintenance of a home). A person who is self-employed, employed as a homemaker, or who is living off his/her earnings may be considered gainfully employed for tuition purposes, as may a person whose primary support is public assistance.

(10) General Academic Teaching Institution--The University of Texas at Austin; The University of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A&M University, Main University; The University of Texas at Arlington; Tarleton State University; Prairie View A&M University; Texas Maritime Academy (now Texas A&M University--Galveston); Texas Tech University; University of North Texas; Lamar University; Lamar State College--Orange; Lamar State College--Port Arthur; Texas A&M University--Kingsville; Texas A&M University--Corpus Christi; Texas Woman's University; Texas Southern University; Midwestern State University; University of Houston; University of Texas--Pan American; The University of Texas at Brownsville; Texas A&M University--Commerce; San Houston State University; Texas State University--San Marcos; West Texas A&M University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; and The University of Texas at Tyler, and as defined in Texas Education Code, §61.003(3).

(11) Institution or institution of higher education--any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(12) Legal guardian--a person who is appointed guardian under the Texas Probate Code, Chapter 693, or a temporary or successor guardian.

(13) Maintain a residence--to physically reside in a location. The maintenance of a residence is not interrupted by a temporary absence from the state, as provided in §21.730(e) of this title (relating to Determination of Resident Status).

(14) Managing conservator--a parent, a competent adult, an authorized agency, or a licensed child-placing agency appointed by court order issued under the Texas Family Code, Title 5.

(15) Nonresident tuition--the amount of tuition paid by a person who does not qualify as a Texas resident under this subchapter unless such person qualifies for a waiver program under §21.735 of this title (relating to Waivers that Permit Nonresidents to Pay Resident Tuition).

(16) Parent--a natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term does not include a step-parent.

(17) Possessory conservator--a natural or adoptive parent appointed by court order issued under the Texas Family Code, Title 5.

(18) Private high school--a private or parochial school accredited by an accrediting agency that is recognized and accepted by the Texas Private School Accreditation Commission. The term does not include a home school.

(19) Public technical institute or college--the Lamar Institute of Technology or any campus of the Texas State Technical College System.

(20) Regular semester--a fall or spring semester, typically consisting of 16 weeks.

(21) Residence--a person's home or other dwelling place.

(22) Resident tuition--the amount of tuition paid by a person who qualifies as a Texas resident under this subchapter.

(23) Temporary absence--absence from the State of Texas with the intention to return, generally for a period of less than five years.

(24) United States Citizenship and Immigration Services (USCIS)--the bureau of the U.S. Department of Homeland Security that is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

§21.730. Determination of Resident Status.

(a) The following persons shall be classified as Texas residents and entitled to pay resident tuition at all institutions of higher education:

(1) a person who:

(A) graduated from a public or accredited private high school in this state or received the equivalent of a high school diploma in this state, and

(B) maintained a residence continuously in this state for:

(i) the thirty-six months immediately preceding the date of graduation or receipt of the diploma equivalent, as applicable; and

(ii) the 12 months preceding the census date of the academic semester in which the person enrolls in an institution.

(2) a person who:

(A) established a domicile in this state not less than 12 months before the census date of the academic semester in which the person enrolls in an institution; and

(B) maintained a residence continuously in the state for the 12 months immediately preceding the census date of the academic semester in which the person enrolls in an institution.

(3) a dependent whose parent:

(A) established a domicile in this state not less than 12 months before the census date of the academic semester in which the person enrolls in an institution; and

(B) maintained a residence continuously in the state for the 12 months immediately preceding the census date of the academic semester in which the person enrolls in an institution.

(b) The following non-U.S. citizens may establish a domicile in this state for the purposes of subsection (a)(2) or (3) of this section:

(1) a Permanent Resident;

(2) a person who is eligible for permanent resident status, as defined in §21.728(6) of this title (relating to Definitions);

(3) an eligible nonimmigrant that holds one of the types of visas listed in Chart I and incorporated into this subchapter for all purposes;
Figure: 19 TAC §21.730(b)(3)

(4) a person classified by the USCIS as a Refugee, Asylee, Parolee, Conditional Permanent Resident, or Temporary Resident;

(5) a person holding Temporary Protected Status, and Spouses and Children with approved petitions under the Violence Against Women Act (VAWA), an applicant with an approved USCIS I-360, Special Agricultural Worker, and a person granted deferred action status by USCIS;

(6) a person who has filed an application for Cancellation of Removal and Adjustment of Status under Immigration Nationality Act 240A(b) or a Cancellation of Removal and Adjustment of Status under the Nicaraguan and Central American Relief Act (NACARA), Haitian Refugee Immigrant Fairness Act (HRIFA), or the Cuban Adjustment Act, and who has been issued a fee/filing receipt or Notice of Action by USCIS; and

(7) a person who has filed for adjustment of status to that of a person admitted as a Permanent Resident under 8 United States Code 1255, or under the "registry" program (8 United States Code 1259), or the Special Immigrant Juvenile Program (8 USC 1101(a)(27)(J)) and has been issued a fee/filing receipt or Notice of Action by USCIS.

(c) The domicile of a dependent's parent is presumed to be the domicile of the dependent unless the dependent establishes eligibility for resident tuition under subsection (a)(1) of this section.

(d) A domicile in Texas is presumed if, at least 12 months prior to the census date of the semester in which he or she is to enroll, the person owns real property in Texas, owns a business in Texas, is married to a person who has established a domicile in Texas; or has executed a currently-valid Last Will and Testament that has been deposited with a county clerk in Texas, indicating the person is a resident of Texas. Gainful employment other than work-study and other such student employment can also be a basis for establishing a domicile.

(e) The temporary absence of a person or a dependent's parent from the state for the purpose of service in the U.S. Armed Forces, Public Health Service, Department of Defense, U.S. Department of State, as a result of an employment assignment, or for educational purposes, shall not affect a person's ability to continue to claim that he or she is a domiciliary of this state. The person or the dependent's parent shall provide documentation of the reason for the temporary absence.

(f) The temporary presence of a person or a dependent's parent in Texas for the purpose of service in the U.S. Armed Forces, Public Health Service, Department of Defense or service with the U.S. Department of State, or as a result of any other type of employment assignment does not preclude the person or parent from establishing a domicile in Texas.

§21.731. Information Required to Initially Establish Resident Status.

(a) To initially establish resident status under §21.730 of this title (relating to Determination of Resident Status), a person shall provide the institution with a completed set of Core Residency Questions as described in Chart II, which is incorporated into §21.728(3) of this title (relating to Definitions).
Figure: 19 TAC §21.731(a)

(b) An institution may request that a person provide documentation to support the answers to the Core Residency Questions. A list of appropriate documents is described in Chart IV of §21.733(a) of this title (relating to Reclassification Based on Additional or Changed Information), and incorporated into this subchapter for all purposes.

(c) If a person who establishes resident status under §21.730(a)(1) of this title is not a Citizen of the United States or a Permanent Resident, the person shall, in addition to the other requirements of this section, provide the institution with a signed affidavit, stating that the person will apply to become a Permanent Resident as soon as the person becomes eligible to apply. The affidavit shall be required only when the person applies for resident status and shall be in the form described in Chart III and incorporated into this subchapter for all purposes.
Figure: 19 TAC §21.731(c)

(d) An institution shall not impose any requirements in addition to the requirements established in this section for a person to establish resident status.

§21.732. Continuing Resident Status.

(a) Except as provided under subsection (c) of this section, a person who was enrolled in an institution for any part of the 2006 state fiscal year and who was classified as a resident of this state under Chapter 54, Subchapter B, Texas Education Code, in the last academic period of that year for which the person was enrolled is considered to be a resident of this state for purposes of this subchapter, as of the beginning of the fall semester, 2006.

(b) Except as provided by subsection (c) of this section, a person who has established resident status under this subchapter is entitled to pay resident tuition in each subsequent academic semester in which the person enrolls at any institution.

(c) A person who enrolls in an institution after two or more consecutive regular semesters during which the person is not enrolled in a public institution shall submit the information required in §21.731 of this title (relating to Information Required to Initially Establish Resident Status), and satisfy all the applicable requirements to establish resident status.

§21.733. Reclassification Based on Additional or Changed Information.

(a) If a person is initially classified as a nonresident based on information provided through the set of Core Residency Questions, the person may request reclassification by providing the institution with supporting documentation as described in Chart IV, which is incorporated into §21.731(b) of this title (relating to Information Required to Initially Establish Resident Status).
Figure: 19 TAC §21.733(a)

(b) A person shall provide the institution with any additional or changed information which may affect his or her resident or nonresident tuition classification under this subchapter.

(c) An institution may reclassify a person who had previously been classified as a resident or nonresident under this subchapter based on additional or changed information provided by the person.

(d) Any change made under this section shall apply to the first succeeding semester in which the person is enrolled, if the change is made on or after the census date of that semester. If the change is made prior to the census date, it will apply to the current semester.

§21.735. Waiver Programs for Certain Nonresident Persons.

A person who is classified as a nonresident under the provisions of this section shall be permitted to pay resident tuition, if the person qualifies for one of the following waiver programs:

(1) Economic Development and Diversification Program.

(A) A nonresident person, (including a Citizen, a Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) whose family has been transferred to Texas by a company under the state's Economic Development and Diversification Program, and a person's spouse and children shall pay resident tuition as soon as they move to Texas, if the person provides the institution with a letter of intent to establish Texas as his/her home. A person who moves to Texas to attend an institution before his/her family is transferred is permitted to pay the resident tuition beginning with the first semester or term after the family moves to the state.

(B) After the family has maintained a residence in Texas for 12 months, the person may request a change in classification in order to pay resident tuition.

(C) A current list of eligible companies is maintained on the Coordinating Board web site at www.collegefortexans.com.

(2) Program for Teachers, Professors, their Spouses and Dependents.

(A) A nonresident person (including a Citizen, Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) employed as a teacher or professor at least half time on a regular monthly salary basis (not as hourly employee) by an institution shall pay resident tuition at any institution in the state and the spouse and dependent children of the nonresident person shall also pay resident tuition.

(B) This waiver program is applicable only during the person's periods of employment.

(C) If a spouse or dependent child of the teacher or professor attends an institution other than the employing institution, the employing institution shall provide a letter to the spouse or child's institution verifying the employment of the teacher or professor.

(3) Program for Teaching Assistants and Research Assistants, their Spouses and Dependents.

(A) A nonresident person (including a Citizen, Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) employed by an institution as a teaching or research assistant on at least a half-time basis in a position related to his/her degree program shall pay resident tuition at any institution in this state and the spouse and dependent children of the nonresident person shall also pay resident tuition.

(B) The employing institution shall determine whether or not the person's employment relates to the degree program.

(C) If a spouse or dependent child of the teacher or professor attends an institution other than the employing institution, the employing institution shall provide a letter to the spouse or child's institution verifying the employment of the teaching or research assistant.

(D) This waiver program is applicable only during the person's periods of employment.

(4) Program for Competitive Scholarship Recipients.

(A) A nonresident person (including a Citizen, Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) who receives a competitive scholarship from the institution is entitled to pay resident tuition.

(B) In order for the person to be eligible for this waiver program, the competitive scholarship must:

(i) total at least $1,000 for the period of time covered by the scholarship, not to exceed 12 months; and

(ii) be awarded by a scholarship committee authorized in writing by the institution's administration to grant scholarships that permit this waiver of nonresident tuition; and

(iii) be awarded according to criteria published in the institution's paper or electronic catalog, available to the public in advance of any application deadline; and

(iv) be awarded under circumstances that cause both the funds and the selection process to be under the control of the institution; and

(v) permit awards to both resident and nonresident persons.

(C) The scholarship award shall specify the semester or semesters for which the scholarship is awarded and a waiver of nonresident tuition under this provision shall not exceed the semester or semesters for which the scholarship is awarded.

(D) If the scholarship is terminated for any reason prior to the end of the semester or semesters for which the scholarship was initially awarded, the person shall pay nonresident tuition for any semester following the termination of the scholarship.

(E) The total number of persons receiving a waiver of nonresident tuition in any given semester under this provision shall not exceed 5 percent of the students enrolled in the same semester in the prior year in that institution.

(F) If the scholarship recipient is concurrently enrolled at more than one institution, the waiver of nonresident tuition is only effective at the institution awarding the scholarship. An exception for this rule exists for a nonresident person who is simultaneously enrolled in two or more institutions of higher education under a program offered jointly by the institutions under a partnership agreement. If one of the partnership institutions awards a competitive scholarship to a person, the person is entitled to a waiver of nonresident tuition at the second institution.

(G) If a nonresident person is awarded a competitive academic scholarship or stipend under this provision and the person is accepted in a clinical biomedical research training program designed to lead to both a doctor of medicine and doctor of philosophy degree, he or she is eligible to pay the resident tuition rate.

(5) Programs for Lowered Tuition for Individuals from Bordering States or Mexico.

(A) Programs that Require Reciprocity. Waivers of nonresident tuition made through each of the following three programs for persons from states neighboring Texas must be based on reciprocity and the institution shall not grant these waivers unless the institution has been provided with a current written agreement with a similar institution in the other state, agreeing to lower tuition for Texas students attending that institution. A participating Texas institution shall file a copy of such agreements with the Board and the agreements shall not be more than 2 years old. The amount of tuition charged shall not be less than the Texas resident tuition rate.

(i) Persons residing in New Mexico, Oklahoma, Arkansas or Louisiana may pay a lowered nonresident tuition when they attend Texas A&M--Texarkana, Lamar State College--Port Arthur, Lamar State College--Orange or any public community or technical college located in a county adjacent to their home state.

(ii) Persons residing in New Mexico and Oklahoma may pay a lowered nonresident tuition when they attend a public technical college located within 100 miles of the border of their home state.

(iii) Persons residing in counties or parishes of New Mexico, Oklahoma, Arkansas or Louisiana adjacent to Texas may pay a lowered nonresident tuition at any institution.

(iv) If a person or a dependent child's family moves to Texas from a bordering state after the person or dependent child has received a waiver of nonresident tuition based on reciprocity as described in this section, the person is eligible for a continued waiver of nonresident tuition for the 12-month period after the relocation to Texas.

(B) Programs That Do Not Require Reciprocity.

(i) Persons who reside in another state may pay a lowered nonresident tuition not less than $30 per semester credit hour above the current resident tuition rate when they attend a general academic teaching institution located within 100 miles of the Texas border if:

(I) the governing board of the institution approves the tuition rate as in the best interest of the institution and finds that such a rate will not cause unreasonable harm to any other institution; and

(II) the Commissioner approves the tuition rate by finding that the institution has a surplus of total educational and general space as calculated by the Board's most current space projection model. This obligation to obtain the approval of the Commissioner is continuing and approval to participate in this waiver program must be obtained at least every two years.

(ii) Persons who reside in New Mexico, Oklahoma, Arkansas or Louisiana and who have graduated or completed 45 semester credit hours while enrolled on a reciprocal basis through Texarkana College may pay resident tuition if they attend Texas A&M--Texarkana.

(C) Programs for Residents of Mexico. Subject to the following provisions, persons who are currently residents of Mexico and those persons who are temporarily residing outside of Mexico but with definite plans to return to Mexico shall pay resident tuition.

(i) An unlimited number of residents of Mexico who have demonstrated financial need and attend a general academic teaching institution or a component of the Texas State Technical College System, if the institution or component is located in a county adjacent to Mexico, Texas A&M University--Corpus Christi, Texas A&M University--Kingsville, the University of Texas at San Antonio, or Texas Southmost College shall pay resident tuition.

(ii) A limited number of residents of Mexico who have financial need may attend a general academic teaching institution or campus of the Texas State Technical College System located in counties not adjacent to Mexico and pay resident tuition. This waiver program is limited to the greater of two students per 1000 enrollment, or 10 students per institution.

(iii) An unlimited number of residents of Mexico who have demonstrated financial need and register in courses that are part of a graduate degree program in public health conducted by an institution in a county immediately adjacent to Mexico shall pay resident tuition.

(6) Program for the beneficiaries of the Texas Tomorrow Fund. A person who is a beneficiary of the Texas Tomorrow Fund shall pay resident tuition and required fees for semester hours paid under the prepaid tuition contract. If the person is not a Texas resident, all tuition and fees not paid under the contract shall be paid at the nonresident rate.

(7) Program for Inmates of the Texas Department of Criminal Justice. All inmates of the Texas Department of Criminal Justice shall pay resident tuition.

(8) Program for Foreign Service Officers. A Foreign Service officer employed by the U.S. Department of State and enrolled in an institution shall pay resident tuition if the person is assigned to an office of the U.S. Department of State that is located in Mexico.

(9) Program for Registered Nurses in Postgraduate Nursing Degree Programs. An institution may permit a registered nurse authorized to practice professional nursing in Texas to pay resident tuition and fees without regard to the length of time that the registered nurse has resided in Texas, if the nurse:

(A) is enrolled in a program designed to lead to a master's degree or other higher degree in nursing; and

(B) intends to teach in a program in Texas designed to prepare students for licensure as registered nurses.

(10) Programs for Military and Their Families. Members of the U.S. Armed Forces, Army National Guard, Air National Guard, Army, Air Force, Navy, Marine Corps or Coast Guard Reserves and Commissioned Officers of the Public Health Service, and their Spouses or Dependent Children.

(A) Assigned to Duty in Texas. Nonresident members of the U.S. Armed Forces, members of Texas units of the Army or Air National Guard, Army, Air Force, Navy, Marine Corps or Coast Guard Reserves and Commissioned Officers of the Public Health Service who are assigned to duty in Texas, and their spouses, or dependent children, shall pay resident tuition. To qualify, the person shall submit during his or her first semester of enrollment in which he or she will be using the waiver program, a statement from an appropriately authorized officer in the service, certifying that he or she (or a parent) will be assigned to duty in Texas on the census date of the term he or she plans to enroll and that he or she, if a member of the National Guard or Reserves, is not in Texas only to attend training with Texas units. Such persons shall pay resident tuition so long as they reside continuously in Texas or remain continuously enrolled in the same degree or certificate program. For purposes of this subsection, a person is not required to enroll in a summer semester to remain continuously enrolled.

(B) After Assignment to Duty in Texas. A spouse and/or dependent child of a nonresident member of the U.S. Armed Forces, or of a Commissioned Officer of the Public Health Service who has been reassigned elsewhere after having been assigned to duty in Texas shall pay resident tuition so long as the spouse or child resides continuously in Texas. For purposes of this subsection, a person is not required to enroll in a summer semester to remain continuously enrolled.

(C) Out-of-State Military. A spouse and/or dependent child of a member of the U.S. Armed Forces, or of a Commissioned Officer of the Public Health Service who is stationed outside of Texas shall pay resident tuition if the spouse and/or child moves to this state and files a statement of intent to establish residence in Texas with the institution that he or she attends.

(D) Survivors. A spouse and/or dependent child of a member of the U.S. Armed Forces, or of a Commissioned Officer of the Public Health Service who died while in service, shall pay resident tuition if the spouse and/or child moves to Texas within 60 days of the date of death. To qualify, a person shall submit satisfactory evidence to the institution that establishes the date of death of the member and that the spouse and/or dependent child has established a domicile in Texas.

(E) Spouse and Dependents who Previously Lived in Texas. A spouse and/or dependent child of a member of the U.S. Armed Forces, or of a Commissioned Officer of the Public Health Service who previously resided in Texas for at least six months shall pay resident tuition, if the member or commissioned officer, at least 12 months prior to the census date of the spouse's or dependent child's enrollment in an institution:

(i) filed proper documentation with the military or Public Health Service to change his/her permanent residence to Texas and designated Texas as his/her place of legal residence for income tax purposes; and

(ii) registered to vote in Texas, and

(iii) has satisfied a least one of the following requirements for the 12 months prior to the first day of the relevant semester:

(I) ownership of real estate in Texas with no delinquent property taxes;

(II) registration of an automobile in Texas, or

(III) execution of a currently-valid will deposited with a county clerk in Texas that indicates he/she is a resident of Texas.

(F) Honorably Discharged Veterans. A former member of the U.S. Armed Forces or Commissioned Officer of the Public Health Service and his/her spouse and/or dependent child shall pay resident tuition for any semester beginning prior to the first anniversary of separation from the military or health service, if the former member:

(i) had, at least one year preceding the census date of the term or semester, executed a document with U.S. Armed Forces or Public Health Service that is in effect on the census date of the term or semester and that changed his/her permanent residence to Texas and designated Texas as his/her place of legal residence for income tax purposes; and

(ii) had registered to vote in Texas for at least 12 months prior to the census date of the term or semester, and

(iii) provides documentation that the member has, not less than 12 months prior to the census date of the term in which he or she plans to enroll, taken the 1 of the 3 following actions:

(I) purchased real estate in Texas with no delinquent property taxes;

(II) registered an automobile in Texas, or

(III) executed a currently-valid will that has been deposited with a county clerk in Texas that indicates he/she is a resident of Texas.

(G) NATO Forces. Non-immigrant aliens stationed in Texas under the agreement between the parties to the North Atlantic Treaty regarding status of forces, their spouses and dependent children, shall pay resident tuition.

(H) Radiological Science Students at Midwestern State University. Members of the U.S. Armed Forces stationed outside the State of Texas who are enrolled in a bachelor of science or master of science degree program in radiological sciences at Midwestern State University by instructional telecommunication shall pay resident tuition and other fees or charges provided for Texas residents, if they began the program of study while stationed at a military base in Texas.

(11) Program for the Center for Technology Development and Transfer. Under agreements authorized by Texas Education Code, §65.45, a person employed by the entity with whom the University of Texas System enters into such an agreement, or the person's spouse or

child, may pay resident tuition when enrolled in a University of Texas System institution.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER CC. EARLY HIGH SCHOOL GRADUATION SCHOLARSHIP PROGRAM

19 TAC §§21.953, 21.954, 21.956, 21.959

The Texas Higher Education Coordinating Board adopts amendments to §§21.953, 21.954, 21.956, and 21.959, concerning the Early High School Graduation Scholarship Program, without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4599).

Senate Bill 1227, 79th Texas Legislature, Regular Session, amended Texas Education Code, §56.203 providing that students who were on track to graduate in keeping with Early High School Graduation Scholarship requirements in 2003 (when requirements were changed), be grandfathered into the program if they graduated prior to September 1, 2005, while meeting the old program requirements. Since 2003, one of the requirements for a scholarship through the program is the completion of the Recommended High School Program or Distinguished High School Program. Prior to that time, any student who graduated within 36 months of the start of ninth grade could receive an award, regardless of the conditions of their graduation. The amendments would reflect the extension of eligibility to these students.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.209, which states that the Coordinating Board is authorized to adopt rules to administer the Early High School Graduation Scholarship Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §21.1083

The Texas Higher Education Coordinating Board adopts an amendment to §21.1083, concerning the Educational Aide Exemption Program, without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4600).

Senate Bill 1227, 79th Legislature, Regular Session, amended Texas Education Code, §54.214 regarding the requirement of having been employed as an educational aide one of the past five years to students who are applying for their first exemptions. Prior to this amendment, an individual would have had to have been employed as an aide one of the past five years in order to qualify for an exemption. Therefore, students who entered the program on the third or fourth year after such employment would lose eligibility to continue in the program once that five-year deadline was reached. They would have to work for a year as an aide in order to re-establish eligibility for the exemption. Students, once having met the employment requirement, may continue to pursue their teaching credentials.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Education Code, §54.214, which states that the Coordinating Board is authorized to adopt rules to implement this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §§22.22 - 22.24

The Texas Higher Education Coordinating Board adopts amendments to §§22.22 - 22.24, concerning the Tuition Equalization Grant Program. Section 22.22 is adopted with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5495). Section 22.23 and §22.24 are adopted without changes to the proposed text as published.

Senate Bill 1227 and House Bill 1172, 79th Texas Legislature, Regular Session, amended Texas Education Code, §61.225 and §61.227 and added new §61.2251, changing eligibility require-

ments for the Tuition Equalization Grant Program. Specifically, changes to §22.22 of Board rules reflect the addition of definitions for terms that are used in this subchapter and the elimination of terms no longer relevant to program operations. Changes to §22.23 require institutions participating in the program must notify the Coordinating Board if their accrediting agency places them on probation, and that the institutions may be penalized if they fail to refund unused program monies to the Board in a timely manner. Changes to §22.24 reflect new student eligibility requirements. The changes apply to students awarded their first grants on or after September 1, 2005. Provisions for individuals awarded grants prior to September 1, 2005, remain as they have been in the past. The primary changes include (1) a requirement of full-time enrollment in order to receive an initial or continuation grant, and (2) maintenance of an overall grade point average of 2.5 while completing a minimum number of hours per academic year (at least 24 hours per academic year for undergraduate students and 18 hours per year for graduate students).

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules necessary to implement the program.

§22.22. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Awarded--offered to a student.

(2) Board--the Texas Higher Education Coordinating Board.

(3) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(4) Cost of attendance--A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college or university. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(5) Degree or certificate program of four years or less--a baccalaureate degree or certificate program other than in architecture, engineering or any other program determined by the Board to require more than four years to complete.

(6) Degree or certificate program more than four years--a baccalaureate degree or certificate program in architecture, engineering or any other program determined by the Board to require more than four years to complete.

(7) Disbursement date--the date on which the Board generates a voucher requesting a grant disbursement for an institution.

(8) Encumbered funds--Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.

(9) Exceptional financial need--the need an undergraduate student has if his or her expected family contribution is less than or equal to $1000.

(10) Enrollment on at least a half-time basis--for undergraduates, enrolled for the equivalent of six or more semester credit hours. For graduate students, enrolled for the equivalent of 4.5 or more semester credit hours.

(11) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(12) Full-time enrollment--For undergraduates, enrollment for the equivalent of twelve or more semester credit hours. For graduate students, enrollment for the equivalent of nine or more semester credit hours.

(13) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

(14) Graduate student--a person who has been awarded a baccalaureate degree.

(15) Initial award--the first Tuition Equalization Grant awarded to a specific person.

(16) Period of enrollment--The term or terms within a state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.

(17) Private or independent institution--any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003.

(18) Program or TEG--the Tuition Equalization Grant Program.

(19) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(20) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determining Residence Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(21) Tuition Equalization Grant need (TEG need)--The total amount of TEG funds that full-time students at an approved institution would be eligible to receive if the program were fully funded.

(22) Undergraduate--an individual who has not yet received a baccalaureate degree.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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19 TAC §§22.25 - 22.30

The Texas Higher Education Coordinating Board adopts the repeal of §§22.25 - 22.30, concerning the Tuition Equalization Grant Program, without changes to the proposal as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5498).

Specifically, these sections are being repealed and new §§22.25 - 22.32 are being adopted simultaneously.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules to enforce the requirements, conditions and limitations of Texas Education Code, §§61.221 - 61.230.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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19 TAC §§22.25 - 22.32

The Texas Higher Education Coordinating Board adopts new §§22.25 - 22.32, concerning the Tuition Equalization Grant Program, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5498).

These new sections are adopted in response to Senate Bill 1227 and House Bill 1172, 79th Texas Legislature, Regular Session, amending Texas Education Code, §61.225 and §61.227 and adding new §61.2251, changing eligibility requirements for the Tuition Equalization Grant Program. Specifically, §22.25 specifies the length of time an individual may continue to receive awards through the program. Section 22.26 reflects the circumstances under which an institution may allow a student to continue to receive awards even though the student has dropped below the academic performance requirements of the program on the basis of hardship. Section 22.27 indicates the limitations on the size of the grant that can be awarded to a person and that the funds must be used to meet expenses related to attending college. Section 22.28 advises institutions on the procedures for adjusting awards. Section 22.29 describes the conditions under which an award may be made to a student who is no longer enrolled. Section 22.30 describes the bases upon which funds are divided among eligible institutions and how the fund distribution is adjusted during a given year. Section 22.31 reflects the ability of institutions to transfer the lesser of 10 percent or $10,000 between the Tuition Equalization Grant Program, Toward EXcellence, Access and Success Grant Program and the Texas College Work-Study Program. Section 22.32 indicates the Board's responsibility to disseminate rules and general information about the program.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§61.221 - 61.250.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. PROVISIONS FOR THE TEXAS PUBLIC EDUCATIONAL GRANT PROGRAMS

19 TAC §22.62

The Texas Higher Education Coordinating Board adopts amendments to §22.62, concerning the Texas Public Educational Grant Programs, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5500).

Texas Education Code, §54.034, permits institutions to make awards from funds generated through the sale of license plates with institutional insignia and/or funds generated through unclaimed Student Deposit Scholarship fees through the Texas Public Educational Grant Program, rather than as separate programs. Such funds could only be issued as need-based grants, through the Texas Public Educational Grant Program to students with financial need. These amendments provide institutions with an additional method of funding the program by issuing License Plate or using Student Deposit Scholarship funds.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jan Greenberg
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19 TAC §22.64

The Texas Higher Education Coordinating Board adopts new §22.64, concerning the Texas Public Educational Grant Programs, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5500).

Texas Education Code, §54.034, permits institutions to make awards from funds generated through the sale of license plates with institutional insignia and/or funds generated through unclaimed Student Deposit Scholarship fees through the Texas Public Educational Grant Program, rather than as separate programs. Such funds could only be issued as need-based grants, through the Texas Public Educational Grant Program to students with financial need. The change will offer institutions an alternate path for issuing License Plate or Student Deposit Scholarship funds to eligible students. The new section explains the use of funds for the program.

No comments were received regarding the new section.

The new section is adopted under the Texas Education Code, §56.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. PROVISIONS FOR THE LICENSE PLATE INSIGNIA SCHOLARSHIP PROGRAM

19 TAC §22.145

The Texas Higher Education Coordinating Board adopts amendments to §22.145, concerning the License Plate Insignia Scholarship Program, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5501).

Texas Education Code, §54.5021 permits institutions to make awards from funds generated through the sale of license plates with institutional insignia through the Texas Public Educational Grant Program to students with financial need.

No comments were received regarding the amendments.

The amendments are adopted under Texas Education Code, §54.5021 and Texas Transportation Code, §504.615, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Transportation Code, §504.615 and Texas Education Code, §54.5021.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §§22.226 - 22.228

The Texas Higher Education Coordinating Board adopts amendments to §§22.226 - 22.228, concerning the Toward EXcellence, Access, and Success (TEXAS) Grant Program, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5501).

Senate Bill 1227 and House Bill 1172, 79th Texas Legislature, Regular Session, amended §§56.301, 56.302, 56.304, 56.305, 56.307, 56.3075 and 56.310, and added new §56.3021 of the Texas Education Code, changing several aspects of the TEXAS Grant Program. Specifically, §22.226 reflects the addition of definitions for terms that are used in these sections. Changes to §22.227 indicate the need for institutions to notify the Coordinating Board if their accrediting agency places them on probation, and specifies that institutions may be penalize for failing to submit required reports to the Board in a timely manner. Changes to §22.228 reflect the establishment of academic progress requirements for students awarded grants on or after September 1, 2005 that are different from the requirements for students awarded grants prior to that time. In order to address the added complexity of academic progress requirements, language regarding requirements for previous recipients was deleted from this section and included in a new §22.229.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.301 - 56.311.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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19 TAC §§22.229 - 22.236

The Texas Higher Education Coordinating Board adopts the repeal of §§22.229 - 22.236, concerning the Toward EXcellence, Access, and Success (TEXAS) Grant Program, without changes to the proposal as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5503).

Specifically, these sections are repealed and new §§22.229 - 22.240 are adopted simultaneously with this repeal.

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.301 - 56.311.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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19 TAC §§22.229 - 22.240

The Texas Higher Education Coordinating Board adopts new §§22.229 - 22.240, concerning the Toward EXcellence, Access, and Success (TEXAS) Grant Program. Section 22.237 is adopted with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5504). Sections 22.229 - 22.236 and §§22.238 - 22.240 are adopted without changes to the proposed text as published.

Senate Bill 1227 and House Bill 1172, 79th Texas Legislature, Regular Session, amended §§56.301, 56.302, 56.304, 56.305, 56.307, 56.3075 and 56.310, and added new §56.3021 of the Texas Education Code, changing several aspects of the TEXAS Grant Program. Specifically, §22.229 lays out the academic progress requirements required of students in order to continue to be eligible for TEXAS Grants and establishes new requirements for students who were awarded grants on or after September 1, 2005. Section 22.230 reflects the length of time that otherwise eligible students may continue to receive grants. New deadlines for students who were awarded grants on or after September 1, 2005 are established. Section 22.231 describes conditions under which an institution may continue to award grants to students who fall below program academic progress requirements. Section 22.232 provides that if funding is limited, priority is to be given to continuing students. Section 22.233 provides that, in awarding initial year funds, priority is to be given to students with the greatest financial need. Section 22.234 reflects the size of awards that may be made to individual students, that funds must be used to meet the costs of attending college, and that outside awards made late in a semester and that cause a student's award to exceed need do not have to be adjusted unless the excess is more than $300. Section 22.235 describes the conditions under which a grant may be awarded to a student who is no longer enrolled. Section 22.236 describes how appropriations are divided among institutions, and indicates that no funds for additional new students will be provided to independent institutions on or after September 1, 2005. Section 22.237 authorizes the Coordinating Board to fund additional TEXAS Grants using excess Student Deposit Scholarship funds sent to the Board by institutions unable to use such funds in a timely manner. Section 22.238 authorizes to develop and implement a process for naming specialty TEXAS Grant awards funded through gifts and donations. Section 22.239 authorizes institutions to transfer the lesser of 10 percent or $10,000 between the Tuition Equalization Grant Program, Toward EXcellence, Access and Success Grant Program and the Texas College Work-Study Program. Section 22.240 indicates the Board's responsibility to disseminate rules and general information about the program.

The following comments were received regarding the new sections:

Comment: Texas Tech University suggested the wording in §22.237, regarding the use of excess student deposit funds to make TEXAS Grant awards, be improved by citing the statute authorizing student deposit funds.

Response: The Board agreed with this comment and §22.237 has been changed as a result of this comment.

Comment: Texas Tech University suggested §22.237 be changed to refer to "excess" instead of "forfeited" student deposit funds.

Response: The Board agreed with this comment and §22.237 has been changed as a result of this comment.

The new sections are adopted under the Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.301 - 56.311.

§22.237. Funds Provided from Student Deposit Fees.

Excess student deposit funds remitted to the Coordinating Board pursuant to Texas Education Code, §54.5021(c), may only be used to make TEXAS Grants. If the year-end unobligated and unexpended balance of student deposit funds at an institution exceeds 150 percent of the total deposits to that fund during that year, the excess funds shall be forwarded to the Coordinating Board for disbursement through the TEXAS Grant Program. If an institution established an endowment fund from excess funds prior to the end of state Fiscal Year 2001, no additional excess funds may be added to the endowment corpus. All excess funds and their earnings (including the earnings of the endowment fund) must be used in calculating the year-end balance subject to the 150 percent limit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jan Greenberg
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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.253 - 22.256

The Texas Higher Education Coordinating Board adopts amendments to §§22.253 - 22.256, concerning the Texas Educational Opportunity Grant Program, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5507).

Senate Bill 1227, 79th Texas Legislature, Regular Session amended Texas Education Code, §§56.402 - 56.407, concerning the Towards EXcellence, Access and Success (TEXAS) Grant II Program. Specifically, the amendments to §§22.253 - 22.256 reflect the program name change from the Toward EXcellence, Access. and Success Grant II Program to the Texas Educational Opportunity Grant Program. Changes to §22.254 reflect the addition of definitions for terms that are used in this subchapter. The term "awarded" is relevant in determining whether a student's awards fall under old program requirements or new requirements established by the 79th Legislature. The terms "institution" and "Texas Educational Opportunity Grant" are added to simplify and clarify future references in rules to eligible institutions and the grant program described in this title. Changes to §22.254 indicate institutions participating in the program must notify the Coordinating Board if their accrediting agency places them on probation, and that the institutions may be penalized if they fail to refund unused program monies to the Board in a timely manner. Changes to §22.256 reflect the addition of new continuation award requirements for individuals awarded their first awards on or after September 1, 2005. Originally, the program required all students to maintain a 2.5 overall grade point average and complete at least 75 percent of the hours they attempted in order to continue in the program during all years in the program. These requirements will remain in place for students awarded their first grants prior to fall 2005. A student receiving his or her first grants in fall 2005 or later will need to meet the satisfactory academic performance requirements of his or her institution as of the end of the first year in the program and meet the program-specific requirements as of the end of his or her second year in the program. The changes also indicate these requirements must be met by the student unless they are waived by the institution due to hardship.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.403, which provides that the Coordinating Board is authorized to adopt any rules necessary to implement the program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT II PROGRAM

19 TAC §§22.257 - 22.262

The Texas Higher Education Coordinating Board adopts the repeal of §§22.257 - 22.262, concerning the Toward EXcellence, Access, and Success (TEXAS) Grant II Program, without changes to the proposal as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5510).

These sections are being repealed and new §§22.257 - 22.263 are being adopted simultaneously in this issue of the *Texas Register*.

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, §56.403, which provides that the Coordinating Board is authorized to adopt any rules necessary to implement the program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.257 - 22.263

The Texas Higher Education Coordinating Board adopts new §§22.257 - 22.263, concerning the Texas Educational Oppor-

tunity Grant Program, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5510).

Senate Bill 1227, 79th Texas Legislature, Regular Session amended Texas Education Code, §§56.402 - 56.407, concerning the Towards EXcellence, Access and Success (TEXAS) Grant II Program. Specifically, new §22.257 describes the hardship provisions under which an institution may allow a student who otherwise does not meet program academic progress requirements to continue to receive awards. Section 22.258 indicates that if funding is limited, continuing students are to be given priority in making awards over new students. Section 22.259 indicates that in making initial awards to students, priority is to be given to students with the greatest financial need. Section 22.260 specifies the amount of funds that may be awarded to students attending various types of institutions, and that funds are to be used for the purpose of meeting expenses related to attending college. The section also allows students receiving late awards that cause them to receive aid in excess of their need to not have to make refunds to the program if the excess amount is less than or equal to $300. Section 22.261 describes the circumstances under which funds may be disbursed retroactively to an institution on behalf of a student. Section 22.262 describes the allocation of funds among institutions, and how funds are to be delivered to the institutions. Section 22.263 confirms the Coordinating Board's responsibility to disseminate information and rules regarding the program.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §56.403, which states that the Coordinating Board is authorized to adopt any rules necessary to implement the program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER O. EXEMPTION PROGRAM FOR CHILDREN OF PROFESSIONAL NURSING PROGRAM FACULTY AND STAFF

19 TAC §§22.292 - 22.297

The Texas Higher Education Coordinating Board adopts new §§22.292 - 22.297, concerning the Exemption Program for Children of Professional Nursing Faculty and Staff, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5512).

Senate Bill 132, 79th Texas Legislature, Regular Session, added Texas Education Code, §54.222, creating a new tuition exemption for otherwise eligible persons whose parent is employed as a professional nursing faculty member or staff member. Specifically, new §22.293 of Board rules provides definitions for terms that are used in this subchapter and §22.294 indicates that institutions are to exempt eligible students from the payment of tuition. Section 22.295 provides student eligibility requirements for receiving an exemption and the number of terms that a person may receive the exemptions. Section 22.296 indicates the exemption is to be prorated if the parent is not employed on a full-time basis. Section 22.297 provides information about the process of applying for an exemption under the program.

The following comments were received regarding the proposed new sections:

Comment: The Texas Nurses Association suggested that the definition of "child" in §22.293 should include a stepchild.

Response: The Board disagrees that the term "child" should include a stepchild and no changes have been made as a result of this comment. Under the provisions of Texas Family Code, Title V, the parent-child relationship includes only the relationship of a child to his/her natural parents or his/her adoptive parents. This interpretation is consistent with the definitions used in other Coordinating Board rules.

Comment: The Texas Nurses Association commented that §22.295(a)(5) be changed to make the exemption available to students attending colleges other than those at which the parent is employed.

Response: The Board disagreed with this comment and no changes were made to §22.295(a)(5). Such an interpretation would be in direct conflict with Texas Education Code, §54.221(f), which provides: "The tuition exemption provided by this section applies only to enrollment of a child at the institution at which the child's parent is employed or is under contract."

The new sections are adopted under the Texas Education Code, §54.221(g), which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.221.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2005.

TRD-200505153
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 427-6114

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SUBCHAPTER P. EXEMPTION PROGRAM FOR CLINICAL PRECEPTORS AND THEIR CHILDREN

19 TAC §§22.302 - 22.309

The Texas Higher Education Coordinating Board adopts new §§22.302 - 22.309, concerning the Exemption Program for Clinical Preceptors and Their Children. Sections 22.304 - 22.306

are adopted with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5513). Section 22.302, 22.303, and 22.307 - 22.309 are adopted without changes to the proposed text as published.

Senate Bill 132, 79th Texas Legislature, Regular Session, enacted Texas Education Code §54.222, creating a new partial tuition exemption for otherwise eligible persons who work as clinical preceptors, providing supervision to nursing students in a clinical setting. Specifically, new §22.303 of Board rules provides definitions for terms that are used in this subchapter and §22.304 indicates that institutions are to exempt eligible students from the payment of up to $500 of tuition per term or semester. Section 22.305 provides the eligibility requirements for preceptors and §22.306 provides the eligibility requirements for the children of preceptors. Section 22.307 indicates the number of terms that persons may receive the exemptions. Section 22.308 indicates the exemption may not be for more than the person's tuition or $500, whichever is less. Section 22.309 provides information about the process of applying for an exemption under the program.

The following comments were received regarding the proposed new sections:

Comment: The Texas Nurses Association commented that the definition of "child" in §22.303 should include a stepchild.

Response: The Board disagreed that the term "child" should include a stepchild. Under the provisions of the Texas Family Code, Title V, the parent-child relationship includes only the relationship of a child to his/her natural parents or his/her adoptive parents. This interpretation is consistent with definitions used in other Coordinating Board rules. No change has been made as a result of this comment.

Comment: The Texas Nurses Association suggested that §22.304 be amended to clarify that both eligible preceptors and eligible students qualify for the exemption of up to $500 per term.

Response: The Board agrees with this comment and §22.304 has been changed as a result of this comment.

Comment: The Texas Nurses Association suggested that §22.305 and §22.306 be revised to eliminate the requirement that the preceptor or child be enrolled in an institution that offers an undergraduate program of professional nursing. The preceptor must serve under an agreement with an undergraduate professional nursing program, but neither the preceptor nor the child need to be enrolled in that same institution.

Response: The Board agrees with this comment and §22.305(3) and §22.306(2) are deleted.

The new sections are adopted under the Texas Education Code, §54.222(g), which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.222.

§22.304. Tuition Exemption.
Each institution of higher education shall exempt all eligible preceptors and eligible students from the payment of up to $500 of tuition per term or semester.

§22.305. Eligible Preceptors.
To receive an exemption under this program, a preceptor must:

(1) be a resident of Texas;

(2) be a registered nurse;

(3) be serving under a written preceptor agreement with an undergraduate professional nursing program as a clinical preceptor for students enrolled in the program for the semester or other academic term for which the exemption is sought.

§22.306. Eligible Students.
To receive an exemption under this program, a student must:

(1) be a resident of Texas;

(2) be the child of a clinical preceptor who is serving under a written preceptor agreement with an undergraduate professional nursing program as a clinical preceptor for students enrolled in the program for the semester or other academic term for which the exemption is sought.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2005.

TRD-200505151
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 427-6114

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CHAPTER 25. OPTIONAL RETIREMENT PROGRAM

SUBCHAPTER A. OPTIONAL RETIREMENT PROGRAM

19 TAC §§25.3 - 25.6

The Texas Higher Education Coordinating Board adopts amendments to §§25.3 - 25.6, concerning the Optional Retirement Program (ORP), without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5515).

Specifically, these amendments will incorporate recent legislative changes, make technical corrections, add clarifying language, add administrative flexibility for institutions in establishing local supplemental contribution rates, provide an alternative process for companies to certify compliance with Texas Government Code Chapter 804 regarding Qualified Domestic Relations Orders, and establish certain institutional notification and documentation requirements.

Comments were received from Texas Tech University recommending that the proposed new notification requirement in §25.6(h)(2) should be extended from a minimum of 15 business days to a minimum of 21 business days and that, for consistency, the notification requirement in §25.6(h)(1) should be the same as the time period proposed in §25.6(h)(2). The concern expressed was that the "HR Offices that would be charged with ensuring this notification is made are not always aware that an ORP-eligible employee has been hired until after their first active day on the job." They indicated that a new employee's benefits orientation "is generally after and may be two to three weeks after the person reports to work."

Response: We disagree with this comment. Proposed new §25.6(h)(2) will require institutions to provide written notification to a new ORP-eligible employee indicating the beginning and ending dates of his or her 90-day ORP election period, along with the local procedures for submitting the election form, within 15 business days of his or her initial ORP eligibility date, which is the first day of employment in an ORP-eligible position. New employees who do not submit their ORP election forms on or before their initial eligibility date (or before payroll is run for that month, if local policies allow it) are required by law to become active members of the default retirement plan (Teacher Retirement System) for that month and will forfeit employer contributions that would have been made to their ORP account if they had participated in ORP during their first month. Therefore, we believe that allowing institutions 15 business days (generally, three calendar weeks) provides an appropriate balance between the needs of the institution and the new employees. The 15-day extension was based on feedback received from another large institution as we were preparing the amendments for proposal, and the commenting institution has indicated that their new employee orientation normally is conducted within three calendar weeks, which would fall within the proposed deadline. The existing notification requirement in §25.6(h)(1) requires institutions to provide the "Overview" document, which contains basic information about ORP and TRS, to new ORP-eligible employees on or before their first day of employment in an ORP-eligible position. The document may be provided to the new employee as an e-mail attachment or through written notification of the location of the link to the document on either the Coordinating Board's website or the institution's website. This could be incorporated into the hiring department's employment offer. We do not believe that it is appropriate to allow up to three weeks after the initial eligibility date to provide this information because its purpose is to help the employee learn about the two plans and make a decision. No changes were made as a result of this comment.

These amendments are adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with general rulemaking authority; Texas Government Code, §830.002(c), which provides the Coordinating Board with authority to develop policies, practices, and procedures to provide greater uniformity in the administration of ORP; §830.101(b), which provides the Coordinating Board with specific rulemaking authority to establish eligibility for participation in ORP; and §830.006(b), which provides that institutions must keep records, make certifications, and furnish to the Coordinating Board information and reports as required by the Coordinating Board to enable it to carry out its ORP-related functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2005.

TRD-200505152
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

22 TAC §281.22

The Texas State Board of Pharmacy adopts amendments to §281.22, concerning Informal Disposition of a Contested Case. The amendments are adopted without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5241).

The adopted amendments clarify that the procedures for the informal disposition of contested cases applies to registered pharmacy technicians.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2005.

TRD-200505221
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: December 4, 2005
Proposal publication date: September 2, 2005
For further information, please call: (512) 305-8028

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22 TAC §281.57

The Texas State Board of Pharmacy adopts amendments to §281.57, concerning Disciplinary Guidelines. The amendments are adopted without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5242).

The adopted amendments clarify that the disciplinary guidelines apply to registered pharmacy technicians.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2005.

TRD-200505222
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: December 4, 2005
Proposal publication date: September 2, 2005
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES
SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.37

The Texas State Board of Pharmacy adopts amendments to §291.37, concerning Centralized Prescription Dispensing. The amendments are adopted without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5243).

The adopted amendments allow a Class E (non-resident) pharmacy to dispense or refill prescriptions for another Class A (community) or Class C (institutional) pharmacy.

One written comment was received from Medco Health Solutions, Inc. supporting the change.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.051(b) as authorizing the agency to adopt rules concerning the operation of a licensed pharmacy located in this state applicable to a pharmacy licensed by the board that is located in another state, if the board determines the rule is necessary to protect the health and welfare of the citizens of this state.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2005.

TRD-200505223
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: December 4, 2005
Proposal publication date: September 2, 2005
For further information, please call: (512) 305-8028

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CHAPTER 309. GENERIC SUBSTITUTION

22 TAC §309.4

The Texas State Board of Pharmacy adopts amendments to §309.4, concerning Patient Notification. The amendments are adopted without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5244).

The adopted amendments implement changes made to Chapter 562 of the Texas Pharmacy Act during the 79th Regular Session of the Texas Legislature. House Bill 836, passed during the 79th Regular Session of the Texas Legislature, amended the Texas Pharmacy Act requiring (1) pharmacists to offer patients the option of paying for a prescription drug at the lower price if the actual price of the prescription drug is lower than the patient's insurance plan copayment and (2) pharmacists or his or her agent/employee to inform the patient or the patient's agent that a less expensive generically equivalent drug product is available for the brand prescribed and ask the patient to choose between the generically equivalent drug and the brand prescribed. In addition, there were changes made to the wording of the "generic sign" required to be posted in pharmacies.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §551.002, §554.051, and Chapter 562 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets Chapter 562 as authorizing the Board to adopt rules concerning the selection of generically equivalent drugs.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2005.

TRD-200505224

Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: December 4, 2005
Proposal publication date: September 2, 2005
For further information, please call: (512) 305-8028

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PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 379. FEES AND RENEWAL

22 TAC §379.1, §379.2

The Texas State Board of Podiatric Medical Examiners adopts an amendment to §379.1 and §379.2 concerning Fees without changes to the proposed text as published in the August 26, 2005 issue of the *Texas Register* (30 TexReg 4896). The text will not be republished.

The amendments are being adopted so that the board can raise the renewal fee to cover costs of our appropriations in the 2006 - 2007 Appropriations Bill. The bill contains a contingency rider that states we must raise additional revenue above and beyond our current revenue collections in order to receive the funding. We must also change the process for calculating penalty fees based on legislation enacted by §202.301 as amended by 79th Leg., R.S. and S.B. 402.

No comments were received regarding the board's adoption of the amended sections.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. This rule is also authorized by and affects Texas Occupations Code §202.153 which authorized the board by rule to establish fees in amounts reasonable and necessary to cover the cost of administering this chapter.

The adopted amendments implement the Texas Occupations Code §202.153.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505220
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: November 30, 2005
Proposal publication date: August 26, 2005
For further information, please call: (512) 305-7000

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 181. VITAL STATISTICS

SUBCHAPTER B. VITAL RECORDS

25 TAC §181.22

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) adopts an amendment to §181.22, concerning the fees charged for vital records services without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5537) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The revisions are necessary to implement the Department of Information Resource (DIR) charges to the department for the Texas Online conversion and accessibility costs related to the imaging, indexing, and production of records that will improve customer service and business processes within the Vital Statistics Unit (VSU). These customer service enhancements will be paid from a $10 fee for various vital record services.

The VSU needs to image roughly 46 million vital records for which there is no backup in the event of a catastrophic event such as a fire. Protection of these records will be through the digitization process and will include the complete re-engineering of the VSU's business process in vital records to move from a highly manual and labor intensive process to one that is largely automated and based on computer technology. Article IX of the Fiscal Year (FY) 2006-2007 Appropriations Bill, §8.11, (2005), authorizes the use of fee revenue for paying the costs associated with implementing and maintaining these electronic services.

Additionally, Article II of the department's appropriations for FY 2006-2007 added a contingency rider, which made a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Account's Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

Also, House Bill 2100, Texas Legislature 79th Regular Session, 2005, amends the Health and Safety Code by adding §195.005, which requires the department to create and sell heirloom wedding anniversary certificates for a $50.00 fee. House Bill 2101, Texas Legislature 79th Regular Session, 2005, amends Health and Safety Code, §192.0021, which requires the department to promote and sell heirloom birth certificates for a fee not to exceed $50.00.

SECTION-BY-SECTION SUMMARY

Amendments to §181.22 contain cost recovery fees for certain vital records services, fees for Texas Online conversion and accessibility, and new and revised heirloom document fees. Specifically, §181.22(a) adds a $1.00 cost recovery fee for research or certified copies of birth records. Section 181.22(b) adds a $1.00 cost recovery fee for research or certified copies of death certificates. Section 181.22(d) changes the fee for issuing heirloom birth certificates to $50 and the fee for researching a record that is not found to $38. Section 181.22(e) establishes a $50 fee for issuing heirloom-wedding certificates. Section 181.22(f) adds a $1.00 cost recovery fee for the search for any information requested. Section 181.22(g) adds a $1.00 cost recovery fee for a search to verify the existence of a birth or

death record. Section 181.22(h) adds a $1.00 cost recovery fee for a search to verify the existence of a marriage or divorce record. Section 181.22(i) adds a $1.00 cost recovery fee for a search to identify the court that granted an adoption. Section 181.22(l) deletes an unnecessary comma. Section 181.22(n) adds a $1.00 cost recovery fee for a search of the Paternity Registry. Section 181.22(o) adds a $1.00 cost recovery fee for a search of the Acknowledgment of Paternity Registry. Section 181.22(s) establishes a $10 Texas Online fee.

COMMENTS

The following comments were received concerning the proposed sections. Following each comment is the department's response.

Comment: Concerning the rule in general, numerous comments were received from local city/county registration officials throughout Texas regarding the loss of local revenue from the sale of death certificates. Local registration officials suggested that a new fee of $10.00 be imposed for filing the Report of Death for each death certificate.

Response: The department agrees and has determined that new fees for a Report of Death will require new legislation. No changes were made as a result of the comments.

Comment: Concerning the rule in general, two local registration officials requested clarification on the effective date of the proposed new fees and asked if the preservation fee presently charged by local registration officials be included in the final fee.

Response: The department agrees and sent a mass mail-out to all local registration officials and county clerks on July 22, 2005, clarifying proposed vital record rule changes and outlining how the department sees the rule being implemented should it be formally adopted. The clarification included December 1, 2005, as the effective date of the rule if adopted.

The mail-out also included an "Implementation by Local Registrars and County Clerk" if the rule was adopted section. This section states the preservation fee may be charged in addition to the State set fee. No changes were made as a result of the comments.

Comment: Concerning the rule in general, numerous local registration officials were in favor of the proposed new vital record rules changes.

Response: The department agrees with the comments. No changes were made as a result of the comments.

Comment: Concerning §181.22(d), a commenter opposed the proposed increased fee for the heirloom birth certificate.

Response: The department disagrees with the commenter and has determined that the $25 fee increase mandated by HB 2101 for heirloom birth certificates will be an estimated increase in revenue for the state of $118,125 for FY 2006, $157,500 for FY 2007, $157,500 for FY 2008, $157,500 for FY 2009 and $157,500 for FY 2010. These revenues will offset the costs of administering grants to fund childhood immunizations and related education programs. No changes were made as a result of the comments.

Comment: Concerning the rule in general, the department received a couple of comments regarding increase in fees negatively impacting the economic status of citizens in the lower region of Texas.

Response: The department disagrees with the comments and has determined that the public will benefit from adoption of this section. This process will secure the records of the citizens of Texas by automating record storage and retrieval, creating a back-up records storage system, and ensure timely filing of customer requests.

Accessing the data through Texas Online and electronic retrieval of the data for mail and walk-in processing of requests will also result in faster and more accurate processing of all data requests. No changes were made as a result of the comments.

Comment: Concerning the rule in general, several comments from local registration officials were received opposing the fee increase in vital record services.

Response: The department disagrees and has determined there will be a fiscal impact to local governments because local registration officials will also see an increase in revenue, due to the requirements of §191.0045(d) of the Health and Safety Code, which requires local registration officials to charge the same fee as the department for the sale of certified copies of birth and death records. No changes were made as a result of the comments.

The commenters were local city/county registration officials throughout Texas. The commenters were not against the rule in its entirety; however, they expressed concerns and suggested recommendations for changes discussed in the summary of comments.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adopted rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

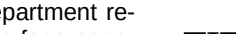
STATUTORY AUTHORITY

The adopted amendment is authorized under Health and Safety Code, §191.0045, which allows the department to charge fees; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation, administration, and provision of health and human services by the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2005.

TRD-200505190
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: December 1, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 458-7111



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §§39.405, 39.418, 39.419, 39.503, 39.603, 39.604, and 39.651. Sections 39.405, 39.503, 39.603 and 39.604 are adopted *with changes* to the proposed text as published in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2834). Sections 39.418, 39.419, and 39.651 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Prior to this rule adoption, alternative language notice was only required for air quality authorizations. The requirement to publish notice in an alternative language newspaper is triggered for air authorizations when either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program under the Texas Education Code. This standard applies to newspaper publication of the Notice of Receipt of Application and Intent to Obtain Permit (NORI) and the Notice of Application and Preliminary Decision (NAPD), as identified under §39.418 and §39.419.

In response to recent legislative inquiries concerning the absence of bilingual public notice in media other than air quality, the commission proposed revisions to existing public notice regulations to maximize public participation in the permitting process, while complementing the goal of House Bill (HB) 801, enacted in 1999, to encourage early public participation. Under the adopted amendments, the requirement to provide published, public notice in an alternative language extends to NORIs and NAPDs for Municipal Solid Waste Permits, Industrial or Hazardous Waste Facility Permits, Class 3 Modifications of Industrial or Hazardous Waste Facility Permits, Wastewater Discharge Permits (including permits for the disposal of sewage sludge or water treatment sludge, but excluding registrations and notifications for sludge disposal under 30 TAC §312.13), Underground Injection Control Permits, and applications for production area authorizations. It is important to note that this adopted rulemaking is not intended to change current notice requirements applicable to a particular program, but rather to require alternative language notice under specified circumstances. The adoption ensures meaningful participation in the permitting process.

The commission originally proposed that the alternative language newspaper notice requirements would apply to permit applications that are declared administratively complete by the executive director on or after March 31, 2006. The period of time between anticipated rule adoption and the trigger date of the new alternative language notice requirements was provided in the proposed rulemaking as a cushion to ensure adequate time for the translation of notice templates, designed to assist the regulated community in satisfying its notice obligations. Since the rulemaking was proposed, it has become clear that the agency will be in a position to offer this translated template assistance upon adoption of this rulemaking. Therefore, the commission adopts language that makes the alternative language newspaper notice requirements applicable to implicated applications filed on or after the effective date of this rulemaking, consistent with relevant provisions of the Texas Government Code.

SECTION BY SECTION DISCUSSION

To conform with commission and Texas Register formatting requirements, non-substantive revisions are made throughout the sections to correct citations, acronym usage, and other minor issues. The commission also changes the word "shall" to "must," "must" to "shall," and "which" to "that" in numerous locations to the adopted amendments to conform to the drafting rules in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 39.405, General Notice Provisions

The adopted amendment to §39.405 would require newspaper publication of notice in alternative language(s) under certain circumstances. Specifically, when an applicant is required to publish a NORI or a NAPD, and either the elementary or middle school nearest in proximity to the facility subject to the permit application is required to provide a bilingual education program under the applicable provision of the Texas Education Code, in conjunction with the satisfaction of one of three elements identified in this adopted section, the applicant must publish the notice in an alternative language newspaper that is printed in the same language as that taught through the school bilingual education program.

To conform to Texas Register requirements, subsection (g) is adopted with change by adding "Copy of Application" so that the subsection structure is consistent with that of the other subsections.

Subsection (h) also sets standards for the acceptable circulation of an alternative language newspaper that may publish the required notice. The standards differ between notice for air quality permits and notices for all other media, which require alternative language notice publication under this adopted subsection. This difference is based upon the existence of specific statutory direction regarding the circulation standards for air quality alternative language notice publications. The standard for non-air quality alternative language notice publications is designed to achieve appropriate public notice, consistent with the approach implemented in the English newspaper publication requirements for certain HB 801 authorizations. It should be noted that the newspaper circulation requirements differ between English and alternative language notices. This is due to the inherent differences between English and alternative language newspaper publications, and the statutory requirements which prescribe the circulation standards for newspapers qualified to publish English notices. The English newspaper circulation requirements also differ between media, such as solid waste versus water quality, per statutory mandate.

For air quality authorizations, an applicant is required to publish in a newspaper or publication of general circulation within either the municipality or county in which the subject facility is or will be located. This circulation requirement is mandated by statute. For waste and water quality authorizations, an applicant is required to publish in the county where the facility is or will be located. However, if there is a newspaper or publication of general circulation in the municipality that is home to the subject facility, then the applicant must publish in that newspaper or publication. The rationale behind this requirement is to avoid a result in which an applicant publishes notice in a part of the facility's county that is far in proximity from the potentially interested community.

Additionally, the adopted amendment provides a waiver under limited circumstances if all qualifying newspapers refuse to publish the notice or no qualifying publication exists within the appli-

cable geographical area as currently provided for in the air quality permitting program.

The adopted amendment changes the applicability requirements set forth in the amendment as proposed to the extent that the alternative language newspaper notice requirements will apply to implicated permit applications which are filed on or after the effective date of these rule amendments. This change was made to ensure that the requirements of the rule were implemented in a timely manner. In light of the agency's ability to provide translated notice templates to assist the regulated community at the time that this rule will become effective, the commission is prepared to move forward with instituting these requirements upon adoption.

The adopted amendment also changes the publication requirements with respect to waste and water quality applications to require that alternative language notice be published only once within a publication. This alteration effectively maintains consistency with the counterpart English waste and water quality notice requirements. The requirement for the placement of a second, smaller notice for both English and alternative language newspaper publications within the air quality program remains unchanged. Futhermore, the adopted amendment changes publication waiver verification requirements to exclude waste and water quality authorization applicants from having to provide air pollution control agencies or the EPA copies of publication waiver verifications. These notifications are specific to the air quality program and continue to apply to applicable air quality authorization applicants. Finally, the adopted amendment changes the rule structure by moving the waste and water quality notice content requirements to directly follow the content requirements for air quality alternative language notices in order to ensure clear and consistent rule language.

Section 39.418, Notice of Receipt of Application and Intent to Obtain Permit

The adopted amendment to §39.418(b)(1) and (3) adds language clarifying that published notices under paragraphs (1) and (3) are subject to the alternative language newspaper publication requirements of §39.405(h).

Section 39.419, Notice of Application and Preliminary Decision

The adopted amendment to §39.419(b) and (e)(3) adds language clarifying that published notices under subsections (b) and (e)(3) are subject to the alternative language newspaper publication requirements of §39.405(h).

Section 39.503, Application for Industrial or Hazardous Waste Facility Permit

To conform to Texas Register formatting requirements, §39.503(c) is adopted with change to amend the citation "40 CFR §124.32(b) - (c)" to "40 CFR §124.32(b) and (c)." The adopted amendment to §39.503(d) adds language clarifying that published notices under subsection (d) are subject to the alternative language newspaper publication requirements of §39.405(h).

Section 39.603, Newspaper Notice

The adopted amendment to §39.603 deletes previously existing subsection (d), which set forth procedural and substantive requirements for publishing certain notices of air quality permit applications in an alternative language newspaper. In light of adopted §39.405(h), the effect of the air-specific alternative language newspaper notice provision would be duplicative and unnecessary. There would be no alteration to the current alternative language newspaper notice requirements for air quality permits as a result of the adopted amendment to §39.603.

Section 39.604, Sign-Posting

The adopted amendment to §39.604 changes the previously existing cross-reference in subsection (e), which applied the trigger for the air-specific alternative language newspaper notice requirements to alternative language sign-posting requirements within the air quality permitting program. Under the adopted amendments, §39.603, as it pertains to alternative language newspaper notice, would be deleted. However, the requirements of §39.603(d) remain in full force and effect under adopted §39.405(h). Therefore, the substitution of the cross-reference to §39.603 in favor of §39.405(h) achieves regulatory accuracy without imposing any different substantive change in requirements to the sign-posting requirements under §39.604. Non-substantive changes were made to §39.604(e), including the correction of citation to the waiver provisions in §39.405(h)(7) and the deletion of a rule citation in the next to the last sentence, which was included as a typographical error.

Section 39.651, Application for Injection Well Permit

The adopted amendment to §39.651(d) adds language clarifying that published notices under subsection (d) are subject to the alternative language newspaper publication requirements of §39.405(h).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The primary purpose of this rulemaking action is to extend the alternative language notice requirements, as they exist within the air quality permitting program, to waste and water quality authorizations subject to HB 801 procedural requirements. The goal of this expansion is to maximize public awareness of, and involvement in, the commission's authorization activities. The rulemaking is procedural in nature and does not address environmental risks or exposures. Therefore, the rulemaking does not constitute a major environmental rule, and thus is not subject to a formal regulatory analysis.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the rulemaking action under Texas Government Code, §2007.043. The specific primary purpose of the amendments is to revise the TCEQ rules to establish procedures for the provision of bilingual notice to the public of certain TCEQ permitting proceedings. The amendments will substantially advance this purpose by providing specific provisions on the previously mentioned matters. Promulgation and enforcement of the amendments will not affect private real property, which is the subject of the amendments because the rulemaking is related to the commission's procedural rules, rather than substantive requirements. Implementation of the amendments will not result in any taking of real property. Alternative approaches to the amendments would in-

clude shifting financial burdens associated with providing notice in alternative language upon the state, or altering the scope of authorizations that would be subject to alternative language notice requirements. The alternatives to the amendments would advance the underlying goal of maximizing public involvement in environmental matters that concern the citizens of Texas. If implemented, neither the amendments as adopted, nor these alternatives, would constitute a taking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the action is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to the rules subject to the Texas Coastal Management Program (CMP), and therefore requires that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is consistent with the CMP goals and policies because the rulemaking concerns public notice rules. The public notice rules are a procedural mechanism for notifying the general public of certain permitting actions, but will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

This rulemaking will not affect sites subject to the federal operating permits program in Chapter 122.

PUBLIC COMMENT

A public hearing for this rulemaking action was held on June 10, 2005, in Austin, and the comment period closed on June 13, 2005. The commission received written comments from Texas Representative Juan M. Escobar and an individual.

RESPONSE TO COMMENTS

Representative Escobar expressed gratitude towards the agency for proposing to amend its rules to provide notice in alternative languages to better serve the citizens of Texas.

Response to Comment

The commission appreciates the comments submitted by Representative Escobar on behalf of his constituency and the citizens of Texas.

An individual commented that the cost estimates or calculations are neither comprehensive nor inclusive of all potential costs to be borne by businesses or applicants. Specifically, the individual commented that the cost estimate did not account for expenses related to legal and title searches associated with mineral ownership verification obligations.

Response to Comment

The commission researched the costs of alternative language newspaper publication statewide and considered statistics concerning the anticipated number of applicants to be affected by this rulemaking in an effort to best quantify the financial implications associated with expanding alternative language notice publication requirements. This rulemaking will not require applicants to incur expenses related to legal and title searches associated with mineral ownership verification obligations. Therefore, such expenses are outside the scope of the rulemaking and were not considered by the commission.

An individual commented generally that the notice requirements under the proposal are vague and indefinite. Specifically, the individual suggested that under §39.651(c), it would prove clearer and definitive to substitute the term "district represented" for the term "area" as it is used to identify the facility location and state official who is to be notified under the applicable regulation.

Response to Comment

The amendments adopted through this rulemaking are narrowly limited to extending alternative language public notice requirements to media other than air quality. The adopted rule language concerning notice is consistent with that which currently exists within the public notice regulatory framework. More specifically, this language is consistent with Texas Water Code (TWC), §5.552(b)(2)(A), applicable to injection well permits, which provides that notice must be mailed to "the state senator and the representative who represent the general area in which the facility is located or proposed to be located." With respect to the comments on §39.651(c), this rulemaking does not seek to amend this section in a substantive manner. Section 39.651(c) is amended to conform with commission and Texas Register formatting requirements. The substantive requirements under subsection (c) were in existence prior to this rulemaking and are outside the scope of the adopted amendments.

An individual commented that the notice requirements under §39.651(c)(4)(D), (d)(4)(D), and (f)(3)(B)(iv), concerning the provision of notice to mineral rights owners, are impracticable and potentially impossible. The individual suggests altering the scope of notice recipients to include "not less than one mineral owner or a certain percentage of ownership."

Response to Comment

The amendments adopted through this rulemaking are not intended to affect regulatory requirements existing prior to this rulemaking except to extend alternative language newspaper public notice requirements to non-air quality media. The regulatory provisions cited by the individual deal with requirements outside the scope of the adopted amendments. The commission notes that the requirement to provide mailed notice to persons that own mineral rights underlying tracts of land adjacent to an existing or proposed injection well facility is consistent with the provisions of the Injection Well Act. Specifically, TWC, §27.051(a)(2) provides that the commission may issue an injection well permit if it includes in its findings that no existing rights, including mineral rights, will be impaired.

An individual commented that the newspaper notice requirements contained in §39.651(f)(2)(A) are vague and indefinite. Specifically, the individual expressed concern whether the use of the term "area" as the standard for determining which newspaper is the appropriate choice to satisfy the publication requirements.

Response to Comment

The amendments adopted through this rulemaking are not intended to affect regulatory requirements existing prior to this rulemaking except to extend alternative language newspaper public notice requirements to non-air quality media. The regulatory provisions cited by the individual deal with requirements

outside the scope of the adopted amendments. The individual also commented on §39.651(f)(2)(A), which relates to notices for contested case hearings. However, this rulemaking package is limited to published notices for NORIs and NAPDs. Also, §39.651(f)(2)(A) was opened for the purpose of conforming the language with accepted drafting standards. Furthermore, the use of the term "area" is consistent with federal requirements.

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §§39.405, 39.418, 39.419

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.013, concerning General Jurisdiction of Commission; §5.102, concerning General Powers; §5.103, concerning Rules; §5.105, concerning General Policy; §5.115, concerning Persons Affected in Commission Hearings; Notice of Application; §5.552, concerning Notice of Intent to Obtain a Permit; and §5.553, concerning Preliminary Decision; Notice and Public Comment. The amendments are also adopted under TWC, §26.028, concerning Action on Application; Texas Health and Safety Code, §361.011, concerning Commission's Jurisdiction: Municipal Solid Waste; §361.017, concerning Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste; §361.024, concerning Rules and Standards; §361.064, concerning Permit Application Form and Procedures; §361.0665, concerning Notice of Intent to Obtain Municipal Solid Waste Permit; §361.082, concerning Application for Hazardous Waste Permit: Notice and Hearing; and §361.121, concerning Land Application of Certain Sludge; Permit Required. The extension of alternative language notice requirements to the regulated underground injection control media is also supported by TWC, §27.019, concerning Rules, etc.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.115, 5.552, 5.553, 26.028, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, 361.064, 361.0665, 361.082, and 361.121.

§39.405. General Notice Provisions.

(a) Failure to publish notice. If the chief clerk prepares a newspaper notice that is required by Subchapters G - M of this chapter (relating to Public Notice for Applications for Consolidated Permits, Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(b) Electronic mailing lists. The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) Mail or hand delivery. When Subchapters G - L of this chapter require notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Combined notice. Notice may be combined to satisfy more than one applicable section of this chapter.

(e) Notice and affidavit. When Subchapters G - L of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(f) Published notice. When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality. For air applications subject to §39.603 of this title (relating to Newspaper Notice), applicants shall instead publish notice as required by that rule; and

(2) for applications for solid waste permits and injection well permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in any newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of this subsection may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county.

(g) Copy of application. The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. If the application is submitted with confidential information marked as confidential by the applicant, the applicant shall indicate in the public file that there is additional information in a confidential file. The copy of the application must comply with the following.

(1) A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit and remain available for the publications' designated comment period.

(2) A copy of the complete application (including any subsequent revisions to the application) and executive director's preliminary decision must be available for review and copying beginning on the first day of newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings.

(h) Alternative language newspaper notice.

(1) Air applications or registrations that are declared administratively complete by the executive director on or after September 1, 1999, are subject to this subsection. Permit applications other than air applications or registrations that are required to comply with §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision) that are filed on or after the effective date of this subsection are subject to the requirements of this subsection.

(2) This subsection applies whenever notice is required to be published under §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision), and either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:

(A) students are enrolled in a program at that school;

(B) students from that school attend a bilingual education program at another location; or

(C) the school that otherwise would be required to provide a bilingual education program waives out of this requirement under 19 TAC §89.1205(g).

(3) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of this subsection.

(4) The notice must be published in a newspaper or publication that is published primarily in the alternative languages in which the bilingual education program is or would have been taught, and the notice must be in those languages.

(5) The newspaper or publication must be of general circulation in the county in which the facility is located or proposed to be located. If the facility is located or proposed to be located in a municipality, and there exists a newspaper or publication of general circulation in the municipality, the applicant shall publish notice only in the newspaper or publication in the municipality. This paragraph does not apply to notice required to be published for air quality permits under §39.603 of this title.

(6) For notice required to be published in a newspaper or publication under §39.603 of this title, relating to air quality permits, the newspaper or publication must be of general circulation in the municipality or county in which the facility is located or is proposed to be located, and the notice must be published as follows.

(A) One notice must be published in the public notice section of the newspaper and must comply with §39.411 of this title (relating to Text of Public Notice).

(B) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(i) permit application number;

(ii) company name;

(iii) type of facility;

(iv) description of the location of the facility; and

(v) a note that additional information is in the public notice section of the same issue.

(7) Waste and water quality alternative language must be published in the public notice section of the alternative language newspaper and must comply with §39.411 of this title (relating to Text of Public Notice).

(8) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternative language publications refuse to publish the notice. If the alternative language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(9) Notice under this subsection will only be required to be published within the United States.

(10) Each alternative language publication must follow the requirements of this chapter that are consistent with this subsection.

(11) If a waiver is received under this subsection on an air quality permit application, the applicant shall complete a verification and submit it as required under §39.605(3) of this title (relating to Notice to Affected Agencies). If a waiver is received under this subsection on a waste or water quality application, the applicant shall complete a verification and submit it to the chief clerk and the executive director.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2005.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: May 13, 2005
For further information, please call: (512) 239-6087

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SUBCHAPTER I. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §39.503

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, §361.017, Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste; §361.024, Rules and Standards; §361.064, Permit Application Form and Procedures; and TWC, §5.103, Rules; §5.552, Notice of Intent to Obtain Permit; and 5.553, Preliminary Decision; Notice and Public Comment.

The adopted amendment implements Texas Health and Safety Code, §§361.017, 361.024, and 361.064; and TWC, §§5.103, 5.552, and 5.553.

§39.503. Application for Industrial or Hazardous Waste Facility Permit.

(a) Applicability. This section applies to applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication requirements.

(1) If an applicant for an industrial or hazardous waste facility permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. Mailed notice must be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(2) The requirements of this paragraph are set forth at 40 Code of Federal Regulations (CFR) §124.31(b) - (d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a Class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located and to the persons listed in §39.413 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417. The requirements of this paragraph relating to 40 CFR §124.32(b) and (c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.45 of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Receipt of Application and Intent to Obtain Permit). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); and

(B) the executive director or chief clerk shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(3) The notice must comply with §39.411 of this title (relating to Text of Public Notice). The deadline for public comments on industrial solid waste applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If an applicant proposes a new hazardous waste facility, the agency shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application.

(2) If an applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests.

(3) If an applicant proposes a new industrial or hazardous waste facility that would accept municipal solid waste, the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) of this subsection if public notice is provided under this subsection.

(5) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 cen-

timeters). For public meetings under paragraph (3) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(6) For public meetings held by the agency under paragraph (1) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of hearing.

(1) This subsection applies if an application is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (concerning Contested Case Hearings).

(2) Newspaper notice.

(A) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) or have a total size of at least nine column inches (18 square inches). The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.413 of this title, except that the chief clerk shall not mail notice to the persons listed in paragraph (1) of that section. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under subsection (d)(2) of this section.

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the hearing.

(g) This section does not apply to applications for an injection well permit.

(h) Information repository. The requirements of 40 CFR §124.33(b) - (f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, apply to all applications for hazardous waste permits.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2005.

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For further information, please call: (512) 239-6087

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SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY APPLICATIONS

30 TAC §39.603, §39.604

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.013, General Jurisdiction of Commission, §5.102, General Powers; and §5.103, General Policy; and Texas Health and Safety Code, §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.017, Rules; §382.051, Permitting Authority of Commission; Rules; and §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing.

The adopted amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.017, 382.051, and 382.056.

§39.603. Newspaper Notice.

(a) Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as required by §39.411(b)(1) - (6) and (8) - (10) of this title (relating to Text of Public Notice).

(b) Notice of Application and Preliminary Decision under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title.

(c) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air application, the applicant shall publish notice in a newspaper of general circulation

in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice must be published in the public notice section of the newspaper and must comply with §39.411 of this title.

(2) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(A) permit application number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(d) Alternative publication procedures for small businesses.

(1) The applicant does not have to comply with subsection (c)(2) of this section if all of the following conditions are met:

(A) the applicant and source meets the definition of a small business stationary source in Texas Water Code, §5.135 including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants combined; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Exemption from Permitting) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(e) If an air application is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant shall publish notice once in a newspaper as described in subsection (c) of this section, containing the information under §39.411(d) of this title. This notice must be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.

§39.604. Sign-Posting.

(a) At the applicant's expense, a sign or signs must be placed at the site of the existing or proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs must be provided by the applicant and must substantially meet the following requirements:

(1) Signs must consist of dark lettering on a white background and must be no smaller than 18 inches by 28 inches and all lettering must be no less than 1-1/2 inches in size and block printed capital lettering;

(2) Signs must be headed by the words listed in the following subparagraph:

(A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or

(B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

(3) Signs must include the words "APPLICATION NO." and the number of the permit application. More than one application number may be included on the signs if the respective public comment periods coincide;

(4) Signs must include the words "for further information contact";

(5) Signs must include the words "Texas Commission on Environmental Quality" and the address of the appropriate commission regional office;

(6) Signs must include the telephone number of the appropriate commission office;

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible throughout that public comment period. The applicant shall provide a verification that the sign posting was conducted according to this section.

(c) Each sign placed at the site must be located within ten feet of every property line paralleling a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs must be required along any property line paralleling a public highway, street, or road. The executive director may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public. This section's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application.

(d) The executive director may approve variations from the requirements of this subsection if the applicant has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the executive director under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) Alternative language sign posting is required whenever alternative language newspaper notice would be required under §39.405(h) of this title (relating to General Notice Provisions). The applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs must be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection must be satisfied without regard to whether alternative language newspaper notice is waived under §39.405(h)(7) of this title. The alternative language signs must meet all other requirements of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505196
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 30, 2005
Proposal publication date: May 13, 2005
For further information, please call: (512) 239-6087

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SUBCHAPTER L. PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

30 TAC §39.651

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, §361.017, Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste; §361.024, Rules and Standards; §361.064, Permit Application Form and Procedures; and TWC, §5.103, Rules; §5.552, Notice of Intent to Obtain Permit; §5.553, Preliminary Decisions; Notice and Public Comment; and §27.019, Rules.

The adopted amendment implements Texas Health and Safety Code, §§361.017, 361.024, and 361.064; and TWC, §§5.103, 5.552, 5.553, and 27.019.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505197
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 30, 2005
Proposal publication date: May 13, 2005
For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 101. PRACTICE AND PROCEDURE REGARDING CLAIMS

34 TAC §101.16

The Texas County and District Retirement System adopts an amendment to §101.16, concerning the venue of hearings before the State Office of Administrative Hearings (SOAH). This amended rule is adopted without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4613).

The adopted amendment causes the rule to conform to the statutory change made by §3, House Bill 633, 79th Legislature (2005), which set Travis County as the venue for a hearing before the SOAH involving the retirement system.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2005.

TRD-200505174
Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Effective date: January 1, 2006
Proposal publication date: August 12, 2005
For further information, please call: (512) 637-3230

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CHAPTER 105. CREDITABLE SERVICE

34 TAC §105.2

The Texas County and District Retirement System adopts the repeal of §105.2, concerning the exclusion of probationary employees. This repealed rule is adopted without changes to the proposal as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4614).

The adopted repeal is in conformity with the statutory change made by §9, House Bill 633, 79th Legislature (2005), which, by amendment, repealed the statutory exclusion from membership of the probationary employees of certain subdivisions.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2005.

TRD-200505175

Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Effective date: January 1, 2006
Proposal publication date: August 12, 2005
For further information, please call: (512) 637-3230

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34 TAC §105.3

The Texas County and District Retirement System adopts an amendment to §105.3, concerning the crediting in the retirement system of qualified military service of eligible members. This amended rule is adopted without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4615).

The adopted amendment causes the rule to conform to the statutory changes made by §15, House Bill 633, 79th Legislature (2005), which limited the crediting of qualified military service not subject to the Uniform Services Employment and Reemployment Rights Act (USERRA) to active-duty service; and which eliminated the exclusion of 20-year military retirees from eligibility for qualified military service not subject to USERRA. The adopted rule also implements the statutory change made by §18, House Bill 1984, 78th Legislature (2003) which tied the eligibility for qualified military service to the accumulation of sufficient years of credited service to allow retirement from the authorizing subdivision at age 60.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2005.

TRD-200505176
Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Effective date: January 1, 2006
Proposal publication date: August 12, 2005
For further information, please call: (512) 637-3230

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34 TAC §105.5

The Texas County and District Retirement System adopts an amendment to §105.5, concerning the responsibility under the System for the correction of errors and method to be used by sponsoring employers. This amended rule is adopted without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4615).

The adopted amendment causes the rule to conform to the statutory change made by §13, House Bill 633, 79th Legislature (2005), which clarified that the employer is responsible for the correction of an error caused by the act or omission of the employer.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2005.

TRD-200505177
Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Effective date: January 1, 2006
Proposal publication date: August 12, 2005
For further information, please call: (512) 637-3230

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CHAPTER 107. MISCELLANEOUS RULES

34 TAC §107.10

The Texas County and District Retirement System adopts an amendment to §107.10, concerning the adjustment to the employer's account in the event an ineligible benefit payment caused by the error or omission of the employer is not recoverable by the system. This amended rule is adopted without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4617).

The adopted amendment causes the rule to conform to the statutory change made by §13, House Bill 633, 79th Legislature (2005), which clarified that the employer is responsible for an overpayment of benefits caused by the act or omission of the employer; and implements the authority granted to the system by §35, House Bill 1984, 78th Legislature (2003), to adjust amounts in a subdivision's account to correct an error related to the account.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2005.

TRD-200505178

Tom Harrison
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Effective date: January 1, 2006
Proposal publication date: August 12, 2005
For further information, please call: (512) 637-3230

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34 TAC §107.11

The Texas County and District Retirement System adopts the repeal of §107.11, concerning the authority and powers that a subdivision may exercise over a plan for which it has assumed financial responsibility. This repealed rule is adopted without changes to the proposal as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4617).

The adopted repeal is in conformity with the statutory change made by §5, House Bill 633, 79th Legislature (2005), which expanded and codified the authority and powers granted to successor subdivisions. The proposed repeal eliminates this now unnecessary rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2005.

TRD-200505181
Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Effective date: January 1, 2006
Proposal publication date: August 12, 2005
For further information, please call: (512) 637-3230

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34 TAC §107.12

The Texas County and District Retirement System adopts an amendment to §107.12, concerning the distribution of benefit payments that are due or suspended at the time of the annuitant's death. This amended rule is adopted without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4618).

The adopted amendment causes the rule to conform to the statutory change made by §12, House Bill 633, 79th Legislature (2005), which permits an employer to reemploy a retiree of that employer without causing a suspension of the retiree's annuity.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2005.

TRD-200505182
Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Effective date: January 1, 2006
Proposal publication date: August 12, 2005
For further information, please call: (512) 637-3230

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER C. PERSONNEL AND EMPLOYMENT POLICIES

37 TAC §1.42

The Texas Department of Public Safety adopts the repeal of §1.42, concerning Volunteer Program, without changes to the proposal as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5727).

The repeal of §1.42 is necessary because the volunteer program will no longer be handled by an agency-wide volunteer coordinator. Volunteers will be approved and utilized by supervisory chains of command pursuant to internal department policy.

No comments were received regarding the repeal of the section.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2005.

TRD-200505127
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: November 28, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 424-2135

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CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER D. DRIVER IMPROVEMENT

37 TAC §15.89

The Texas Department of Public Safety adopts amendments to Subchapter D, §15.89, concerning Driver Improvement, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5727).

The amendments will clarify the moving violation convictions that are assessed specific surcharges and not assessed points under the Driver Responsibility Program. The amendments to the section are necessary in order to correct the previous interpretation of provisions contained in Chapter 708 of the Texas Transportation Code. In addition, the amendments add the "No School Bus Endorsement" violation to the list of moving violations in compliance with 49 CFR, Part 383 of the Federal Motor Carrier Safety Act.

Chapter 708 of the Transportation Code grants the department the authority to adopt rules to implement the Driver Responsibility Program (DRP). This program was initially created during the 78th Legislative Session (2003) and requires the department to assess fees based on an individual's driver history. DRP has two major components, a point system and a conviction surcharge system. The point system is based on the accumulation of Class C traffic offenses. An individual receives two points for each traffic conviction and three points if the offense resulted in an accident. The conviction surcharge system is based on a one-time conviction of certain more serious traffic offenses. The program requires the individual to pay the fee, ranging from $100 to $2000 every year for three years.

On September 14, 2005, the department held a public hearing to receive comment(s) from all interested person(s) regarding adoption of the amendments. No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §708.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2005.

TRD-200505125
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: November 28, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 424-2135

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SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

37 TAC §15.162

The Texas Department of Public Safety adopts amendments to Subchapter J, §15.162, concerning the Driver Responsibility Program, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5728).

Chapter 708 of the Transportation Code grants the department the authority to adopt rules to implement the Driver Responsibility Program (DRP). This program was initially created during the 78th Legislative Session (2003) and requires the department to assess fees based on an individual's driver history. The program was amended by the 79th Legislative Session (2005) to allow a person to pay a surcharge over a period of 36 consecutive months. DRP has two major components, a point system and a conviction surcharge system. The point system is based on the accumulation of Class C traffic offenses. An individual receives two points for each traffic conviction and three points if the offense resulted in an accident. The conviction surcharge system is based on a one-time conviction of certain more serious traffic offenses. The program requires the individual to pay the fee, ranging from $100 to $2000 every year for three years.

The statute specifically requires the department to establish rules regarding the acceptance of installment payments. The department has contracted with a vendor to process the surcharge payments. Amendments to subsection (k) are necessary in order to allow for the payment of the surcharge over a period of 36 consecutive months.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §708.002 and §708.153.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2005.

TRD-200505126
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: November 28, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 424-2135

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CHAPTER 29. PRACTICE AND PROCEDURE

37 TAC §29.2

The Texas Department of Public Safety adopts an amendment to §29.2, concerning Practice and Procedure, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5747).

Chapter 29 of the department rules was put in place to provide consistent procedures for occupational licensing and administratively contested matters in areas regulated by the department. Several sections of Texas Transportation Code (TRC), including

Chapter 521, that apply to driver licenses were made exempt from these rules; the ALR process for driver license suspension has its own unique set of rules. However, TRC Chapter 521 also contains provisions for regulation of the Ignition Interlock Device industry, including the authority for the department to take enforcement action. Therefore, adoption of the amendment to §29.2 is necessary in order to provide procedural rules to set the parameters in situations where an administrative hearing is requested on enforcement on an Ignition Interlock matter.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2005.

TRD-200505123
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: November 28, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. MENTAL RETARDATION SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER E. ICF/MR PROGRAMS--CONTRACTING

DIVISION 6. PERSONAL FUNDS

40 TAC §9.254

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §9.254 in Chapter 9, governing Mental Retardation Services--Medicaid State Operating Agency Responsibilities, without changes to the proposed text published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4618).

The amendment is adopted to revise the list of items and services that are in the Medicaid reimbursement rate for intermediate care facilities for persons with mental retardation and related conditions (ICFs/MR) to exclude prescribed medication that is in a category covered by Medicare Part D for an individual who is eligible for Medicare Part D.

The amendment is adopted in conjunction with HHSC's amendment to 1 TAC §355.103, adopted in the November 18, 2005, issue of the *Texas Register*. HHSC is adopting the amendment to 1 TAC §355.103 and this amendment in response to new federal requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Beginning January 1, 2006, individuals, including persons enrolled in the ICF/MR Program, who are eligible for both Medicare and Medicaid must obtain prescription drugs through a Medicare Part D prescription drug plan, rather than through Medicaid.

Under the MMA, Medicaid funds cannot be used to pay for a prescription drug for a person who is eligible for Medicare Part D benefits if that drug is in a category of drugs that is covered by Medicare Part D. Therefore, in amended 1 TAC §355.103, HHSC does not allow an ICF/MR Program provider to include such a drug on its cost report, and in amended §9.254, such a drug is not included in the list of items and services that are in the Medicaid reimbursement rate for ICFs/MR.

The amendment is also adopted to correct rule cross-references that were rendered incorrect upon the transfer of Texas Department of Mental Health and Mental Retardation rules from Title 25 to Title 40 of the Texas Administrative Code.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505216
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Effective date: January 1, 2006
Proposal publication date: August 12, 2005
For further information, please call: (512) 438-3734

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER AA. VENDOR PAYMENT

40 TAC §19.2601

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §19.2601 in Chapter 19, governing Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4620).

The amendment is adopted to revise the list of items and services that are in the Medicaid daily payment rate for nursing facilities to exclude prescription drugs covered by Medicare Part D for an individual who is eligible for Medicare Part D.

The amendment is adopted in conjunction with HHSC's amendment to 1 TAC §355.103, adopted in the November 18, 2005, issue of the *Texas Register*. HHSC is adopting the amendment to 1 TAC §355.103 and this amendment in response to new federal requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Beginning January 1, 2006, individuals, including residents of nursing facilities, who are eligible for both Medicare and Medicaid must obtain prescription drugs through a Medicare Part D prescription drug plan, rather than through Medicaid.

Under the MMA, Medicaid funds cannot be used to pay for a prescription drug for a person who is eligible for Medicare Part D benefits if that drug is in a category of drugs that is covered by Medicare Part D. Therefore, in amended 1 TAC §355.103, HHSC does not allow a nursing facility to include such a drug on its cost report, and in amended 40 TAC §19.2601, such a drug is not included in the list of items and services that are in the Medicaid daily payment rate for nursing facilities.

The amendment is also adopted to correct an inaccurate cross-reference and to replace references to the Texas Department of Human Services with references to DADS, which is the new name of the agency responsible for rules governing licensure and certification requirements for nursing facilities.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate convalescent and nursing homes and related institutions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2005.

TRD-200505217

Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Effective date: January 1, 2006
Proposal publication date: August 12, 2005
For further information, please call: (512) 438-3734

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PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 370. LICENSE RENEWAL

40 TAC §370.1

The Texas Board of Occupational Therapy Examiners adopts amendments to §370.1, concerning License Renewal with changes to the proposed text as published in the August 19, 2005, issue of *Texas Register* (30 TexReg 4795).

The section was amended to add language for online renewal and continuing education requirements for reservists called to active service in the military.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§370.1. License Renewal.

(a) Except for those renewing their first license, licensees are required to renew their licenses every two years by the end of their birth month. A licensee may not provide occupational therapy services without a current license or renewal certificate in hand. If a license expired after all required items are submitted but before the licensee received the renewal certificate, the licensee may not provide occupational therapy services until the renewal certificate is in hand.

(1) General Requirements. The renewal application is not complete until the board receives all required items. The components required for license renewals are:

(A) Signed renewal application form, or online equivalent verifying completion of 30 hours of continuing education, see Chapter 367 of this title (relating to Continuing Education);

(B) The renewal fee and any late fees which may be due;

(C) A passing score on the Jurisprudence exam.

(2) Notification of license expiration. The Board will send notification to each licensee at least 30 days prior to the license expiration date. However, the licensee is responsible for ensuring that the license is renewed.

(3) Late Renewals. A renewal application is late if all required materials are not postmarked prior to the expiration date of the license. Licensees who do not complete the renewal process prior to the expiration date are subject to late fees as described.

(A) If the license has been expired for 90 days or less, the late fee is one-half the examination fee for the license.

(B) If the license has been expired for more than 90 days, the late fee is equal to the examination fee for the license. Those renewing a license more than 90 days late must submit the documentation for the required continuing education with the renewal.

(C) If the license has been expired for one year or longer, the person may not renew the license. To obtain a new license, the applicant must retake and pass the national examination and comply with the requirements and procedure for obtaining an original license set by Chapter 364 of this title (relating to Requirements for Licensure).

(D) If a reserve status licensee is called into active military service, and his or her license expires during service, the licensee may follow the requirements for renewal with no penalty if the licensee:

(i) submits the renewal within 90 days after return to reserve status; and

(ii) submits evidence of active service and its inclusive dates.

(E) A reserve status licensee who is called into active military service will have 6 additional months after release from active military service to submit proof of completion of the 30 required CE hours.

(b) Restoration of a Texas License

(1) Eligibility. A person whose license has been expired for one year or more may restore the license without reexamination if the applicant holds a current license in another state, and has been in practice in the other state for the two years preceding application for restoration.

(2) Duration. When a license is restored, the expiration date will be calculated using the nearest past birth month. The restored license will be valid for no less than one year and no more than two years.

(3) Requirements. The components required for restoration of a license are:

(A) Notarized restoration application;

(B) A passing score on the Jurisprudence exam;

(C) A fee equal to the cost of the examination fee for licensure;

(D) Verification of Licensure from the current licensed state;

(E) History of Employment form for the two years proceeding application; and

(F) Other application information as needed by the board.

(c) Restrictions to Renewal/Restoration

(1) The board will not renew a license if a licensee has defaulted with the Student Loan Corporation (TGSLC). Upon notice from TGSLC that a repayment agreement has been established, the license shall be renewed.

(2) The board will not renew a license if the licensee has defaulted on a court or attorney general's notice of child support. Upon receipt that repayment has been established, the license shall be renewed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2005.

TRD-200505231

John Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Effective date: December 4, 2005

Proposal publication date: August 19, 2005

For further information, please call: (512) 305-6900

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CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners adopts amendments to §372.1, concerning Provision of Services, without changes to the proposed text as published in the August 19, 2005, issue of *Texas Register* (30 TexReg 4795) and will not be republished.

The section was amended to add clarification of the rules.

Comments were received regarding adoption of the amendment. One commenter wrote that she thought it was a great idea and time saver for facilities with only one OTR and thinks their COTA are dependable. The Board agrees. Another correspondent wrote that OTRs are ultimately responsible and therefore should sign off on all notes, as is presently in rule. The Board agrees that the OTR is ultimately responsible whether signing or not. Another response was opposed to the proposed amendment for fear that Aides will do more of the work. Still another writer said she is employed in a large health system's acute rehab department and oversees 3 COTAs daily. Co-signing takes up to an hour a day, so she looks forward to the adoption of the amendment. The last commenter believes this amendment will definitely assist in the hospital's paperwork. The Board read all the comments and agrees that this amendment will save paperwork, and with the OTR's name in the treatment note, the OTR and COTA and linked and the OTR is still responsible ultimately responsible, with signature or not.

The amendment is adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2005.

TRD-200505232

John Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Effective date: December 4, 2005

Proposal publication date: August 19, 2005

For further information, please call: (512) 305-6900

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CHAPTER 373. SUPERVISION

40 TAC §373.1

The Texas Board of Occupational Therapy Examiners adopts amendments to §373.1, concerning Supervision of Non-Licensed Personnel without changes to the proposed text as published in the August 19, 2005, issue of *Texas Register* (30 TexReg 4796) and will not be republished.

The section was amended to add language for when aides may or may not enter data into the patient's medical record.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2005.

TRD-200505233

John Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Effective date: December 4, 2005

Proposal publication date: August 19, 2005

For further information, please call: (512) 305-6900

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board (Board) files this notice of intent to review Title 31, Part 10, Chapter 377, Hydrographic Survey Program, of the Texas Administrative Code (TAC) in accordance with the Texas Government Code, §2001.039. The Board finds that the reason for adopting the chapter continues to exist.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 377 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Jennifer J. Wright, Attorney, Texas Water Development Board, P. O. Box 13231, Austin, Texas 78711-3231, by E-mail to jennifer.wright@twdb.state.tx.us or by fax at (512) 463-5580.

TRD-200505274
Ron Pigott
Deputy Counsel
Texas Water Development Board
Filed: November 15, 2005

♦ ♦ ♦

The Texas Water Development Board (Board) files this notice of intent to review Title 31, Part 10, Chapter 382, Water Infrastructure Fund, of the Texas Administrative Code (TAC) in accordance with the Texas Government Code, §2001.039. The Board finds that the reason for adopting the chapter continues to exist. The Board proposes to amend §382.1 and §382.3 in order to be consistent with recent statutory amendments affecting Chapter 15 of the Texas Water Code and proposes to amend §382.22 to align the requirement therein with other Board programs.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 382 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Srin Surapanani, Attorney, Texas Water Development Board, P. O. Box 13231, Austin, Texas 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax at (512) 463-5580.

TRD-200505263
Jonathan Steinberg
Deputy Counsel
Texas Water Development Board
Filed: November 15, 2005

♦ ♦ ♦

The Texas Water Development Board (board) files this notice of intent to review Title 31, Part 10, Chapter 384, Rural Water Assistance Fund, of the Texas Administrative Code (TAC) in accordance with the Texas Government Code, §2001.039. The board finds that the reason for adopting the chapter continues to exist. The board proposes to amend §384.1 in order to be consistent with recent statutory amendments affecting other board rules and proposes to amend §384.22 to align the requirement therein with other board programs.

As required by §2001.039 of the Texas Government Code, the board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 384 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Jonathan Steinberg, Deputy Counsel, Texas Water Development Board, P. O. Box 13231, Austin, Texas 78711-3231, by E-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

TRD-200505264
Jonathan Steinberg
Deputy Counsel
Texas Water Development Board
Filed: November 15, 2005

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §21.730(b)(3)

Chart I
Eligible Nonimmigrants--Persons with Visas that Allow them to Domicile in the United States

Visa Type	Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
A-1	Ambassadors, public ministers or career diplomats and their immediate family members	Yes
A-2	Other accredited officials or employees of foreign governments and their immediate family members	Yes
A-3	Personal attendants, servants or employees and their immediate family members of A-1 and A-2 visa holders	Yes
B-1	Temporary visitor for business	No
B-2	Temporary visitor for pleasure	No
C-1	Foreign travelers in transit through the United States	No
C-1D	Combined transit and crewmen visa	No
C-2	Person in transit to UN Headquarters under §11(3), (4), or (5) of the Headquarter Agreement.	No
C-3	Foreign government official, members of immediate family, attendant or personal employee in transit	No
C-4	Transit without Visa. See TWOV	No
D-1	Crewmember departing on same vessel of arrival	No
D-2	Crewmember departing by means other than vessel of arrival	No
E-1	Treaty traders, spouse and children	Yes
E-2	Treaty investors, spouse and children	Yes
F-1	Academic student	No
F-2	Spouse or child of F-1	No
F-3	Academic students who are Canadian or Mexican citizens, who commute across the border to study full-time or part-time in the United States.	No**
G-1	Principal resident representative of recognized foreign member government to international organization, and members of immediate family.	Yes
G-2	Other accredited representatives of recognized foreign member governments to international organization and their immediate family members	Yes
G-3	Representatives of non-recognized or nonmember government to international organization, and members of immediate family	Yes

Visa Type	Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
G-4	International organization officer or employee, and their immediate family members	Yes
G-5	Attendants, servants and personal employees of G-1, G-2, G-3 or G-4 visa holders and their immediate family members	Yes
H-1B	Specialty Occupations, DOD workers, fashion models	Yes
H-1C	Nurses going to work for up to three years in health professional shortage areas	No
H-2A	Temporary agricultural workers	No
H-2B	Temporary workers, skilled and unskilled	No
H-3	Trainee	No
H-4	Spouse or child of H-1, H-2 or H-3 visa holders	H-4 dependents of H-1B, Yes; all other H-4 dependents, No
I	Visas for foreign media representatives	Yes
J-1	Visas for exchange visitors	No
J-2	Spouse or child of J-1 visa holders	No
K-1	Fiancé(e)	Yes
K-2	Minor child of K-1	Yes
K-3	Spouse of a U.S. citizen (LIFE Act)	Yes
K-4	Child of a K-3 (LIFE Act)	Yes
L1-A	Executive, managerial	Yes
L1-B	Specialized knowledge	Yes
L-2	Spouse or child of L-1	Yes
M-1	Vocational or other nonacademic students, other than language students	No
M-2	Immediate families of M-1 visa holders	No
M-3	Vocational students who are Canadian or Mexican citizens, who commute across the border to study full-time or part-time in the U.S.	No**
N-8	Parent of alien classified as SK-3 "Special Immigrant"	Yes
N-9	Child of N-8, SK-1, SK-2, or SK-4 "Special Immigrant"	Yes
NATO 1	Principal Permanent Representative of Member State to NATO and resident members of official staff or immediate family	Yes

Visa Type	Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
NATO 2	Other representatives of Member State; Dependents of Member of a Force entering in accordance with the provisions of NATO Status-of-Forces agreement; Members of such a Force if issued visas	Yes
NATO 3	Official clerical staff accompanying Representative of Member State to NATO or immediate member	Yes
NATO 4	Official of NATO other than those qualified as NATO-1 and immediate family	Yes
NATO 5	Expert other than NATO officials qualified under NATO-4, employed on behalf of NATO and immediate family	Yes
NATO 6	Members of civilian component who is either accompanying a Force entering in accordance with the provisions of the NATO Status-of-Forces agreement; attached to an Allied headquarters under the protocol on the Status of International Military headquarters set up pursuant to the North Atlantic Treaty; and their dependents	Yes
NATO 7	Attendants, servants or personal employees of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5 or NATO-6, or immediate	Yes
O-1	Extraordinary ability in the sciences, arts, education, business, athletics	Yes
O-2	Essential support staff of 0-1 visa holders	No
O-3	Immediate family members of 0-1 and O-2 visa holders	O-3 dependents of O-1 holders Yes; O-3 dependents of O-2 holders, No
P-1	Individual or team athletes	No
P-2	Artists and entertainers in reciprocal exchange programs	No
P-3	Artists and entertainers in culturally unique programs	No
P-4	Spouse or child of P-1, P-2 and P-3.	No
Q-1	International cultural-exchange visitors	No
Q-2	Irish Peace Process Cultural and Training Program (Walsh Visas)	No
Q-3	Spouse or child of Q-2	No
R-1	Religious workers	Yes
R-2	Spouse or child of R-1	Yes
S-5	Informant of criminal organization information	No
S-6	Informant of terrorism information	No
T-1	Victim of a severe form of trafficking in persons	Yes

Visa Type	Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
T-2	Spouse of a T-1	Yes
T-3	Child of a T-1	Yes
T-4	Parent of a T-1 visa holder (if the child is under 21 years of age	Yes
TC	No longer issued. TN issued in its place.	No
TD	Spouse or child accompanying TN	
TN	Trade visas for Canadians and Mexicans in NAFTA	No
TPS	Temporary Protected Status	Yes
TWOV	Passenger or Crew	No
U-1	Victim of certain criminal activity	Yes
U-2	Spouse of a U-1	Yes
U-3	Child of a U-1	Yes
U-4	Parent of a U-1 visa holder (if the child is under 21 years of age).	Yes
V-1	Spouse of Legal Permanent Resident (LPR) who is the principal beneficiary of a family-based petition (I-130) which was filed prior to December 21, 2000, and has been pending for at least three years	Yes
V-2	Child of Legal Permanent Resident (LPR) who is the principal beneficiary of a family-based petition (I-130) which was filed prior to December 21, 2000, and has been pending for at least three years	Yes
V-3	Derivative child of a V-1 or V-2 visa holder	Yes

** Please note: These international, commuting students may be eligible for a waiver of nonresident tuition under Texas Education Code §54.060(b).

Figure: 19 TAC §21.731(a)

Chart II
Core Residency Questions

Texas Higher Education Coordinating Board §21.731 requires each student applying to enroll at an institution to respond to a set of core residency questions for the purpose of determining the student's eligibility for classification a resident.

PART A. Student Basic Information. <u>All Students must complete this section.</u>

Name: _____ Student ID Number: _____

Date of Birth: _____

PART B. Previous Enrollment. <u>For all students.</u>

1. Did you attend a public college or university in Texas during a fall and spring term during the past 12 months?
Yes ___ No ___

If you answered **"no"**, please go on to **Part C.**
If you answered "yes", complete questions 2-4:

2. What Texas public institution did you last attend? (Give full name, not just initials.)
_____

3. In which terms were you last enrolled? (check all that apply)
___ fall, 200__ ___ spring, 200__

4. During your last semester at a Texas public institution, did you pay resident (in-state) or nonresident (out-of-state) tuition in your last term or semester at that institution?
___ resident (in-state) ___ nonresident (out-of-state) ___ unknown

5. If you paid in-state tuition at your last institution, was it because you were a resident or because you were a nonresident who received a waiver?
___ resident ___ nonresident with a waiver ___ unknown

IMPORTANT: If you were enrolled at a Texas public institution during either fall or spring of the 2005-6 academic year and were classified as a Texas resident, skip to Part I, sign and date this form and submit it to your institution. Otherwise, please proceed to Part C.

PART C. Residency Claim. <u>All students must complete this section.</u>

Are you a resident of Texas? Yes ___ No ___
If you answered <u>yes</u>, continue to **Part D**.
If you answered <u>no</u>, complete the following question and continue to **Part I.**
Of what state or country are you a resident? _____

PART D. Acquisition of High School Diploma or GED. All students must complete this section.

	Yes	No
1. Did you graduate from high school or complete a GED in TX? If you graduated from high school, what was the name/city of the school?		
2. Did you live in TX the 36 months leading up to high school graduation or completion of the GED?		
3. When you begin the semester for which you are applying, will you have lived in TX for the previous 12 months?		
4. Are you a U.S. Citizen or Permanent Resident?		

Instructions to Part D.:

- If you answered "no" to question 1 or 2 or 3, go to **Part E.**
- If you answered "yes" to all four questions, go to **Part I.**
- If you answered "yes" to questions 1, 2 and 3, but "no" to question 4, complete a copy of the **Affidavit** provided as an Attachment to this form, complete **Part I** of this form, and submit both forms to your institution.

PART E. Basis of Claim to Residency. TO BE COMPLETED BY EVERYONE WHO DID NOT ANSWER "YES" TO QUESTIONS 1, 2, AND 3 OF PART D.

1. Do you file your own federal income tax as an independent tax payer? Yes ___ No ___

2. Are you claimed as a dependent or are you eligible to be claimed as a dependent by a parent or court-appointed legal guardian? Yes ___ No ___ (To be eligible to be claimed as a dependent, your parent or legal guardian must provide at least one half of your support.)

3. If you answered "No" to both questions above, who provides the majority of your support?
Self ___ parent or guardian ___ other: (list)_____

Instructions to Part E.

- If you answered "yes" to question 1, go to Part F.
- If you answered "yes" to question 2, go to Part G.
- If you answered "no" to 1 and 2 and "self" to question 3, go to Part F.
- If you answered "no" to 1 and 2 and "parent or guardian" to question 3, go to Part G.
- If you answered "no" to 1 and 2 and "other" to question 3, go to Part H and provide an explanation.

PART F. Questions for students who answered "Yes" to Question 1 or "Self" to Question 3 of PART E.

	Yes	No	Years	Mo.	Visa/Status
1. Are you a U.S. Citizen or Permanent Resident of the U.S.?					
2. Are you a foreign national whose application for Permanent Resident Status has been approved? (For this to be true you should have received a fee/filing receipt or Notice of Approval (I-797) from USCIS).					

3. Are you a foreign national here with a visa or are you a Refugee, Asylee, Parolee or here under Temporary Protective Status? If so, indicate which.					
4. Do you currently live in Texas? If you are out of state due to a temporary assignment by your employer, please explain in Part H.					
5. If you currently live in Texas, how long have you been living here?					
6. If you are a member of the U.S. military, is Texas your Home of Record?					
Is Texas listed as your military legal residence for tax purposes on your Leave and Earnings Statement?					

	Yes	No
7. Do any of the following apply to you? (Check all that apply)		
a. Hold the title to real property (home, land) in Texas?		
b. Own a business in Texas?		
c. Hold a state or local license to conduct a business or practice a profession in TX?		
d. Were in the US Armed Forces and during that time, you filed a DD 2058, indicating TX as your permanent home?		
e. Have a currently-valid Last Will and Testament on file with a clerk in TX, indicating you are a resident of Texas?		
8. For the past 12 months, have you: (Check all that apply)		
a. been gainfully employed in TX?		
b. leased or rented property in your name in the state?		
c. received services from a social service agency that provides services to homeless persons?		
9. Are you married to a person who could answer "yes" to any part of question 7 or 8?		
If yes, indicate which question could be answered yes by your spouse:	Question:	

PART G. Questions for students who answered "Parent" or "Legal Guardian" to Question 3 of PART E.

	Yes	No	Years	Mo.	Visa/Status
1. Is the parent or legal guardian upon whom you base your claim of residency a U.S. citizen or Permanent Resident?					

2. Is this parent or legal guardian a foreign national whose application for Permanent Resident Status has been approved? (who has a fee/filing receipt or Notice of Approval (I-797) from the USCIS)		
3. Is this parent or legal guardian a foreign national here with a visa or a Refugee, Asylee, Parolee or here under Temporary Protective Status? If so, indicate which.		
4. Does this parent or legal guardian currently live in Texas? If he or she is out of state due to a temporary assignment by his/her employer, please explain in Part H.		
5. If he or she is currently living in Texas, how long has he or she been living here?		
6. If he or she is a member of the U.S. military, is Texas his or her Home of Record?		
Is Texas listed as your military legal residence for tax purposes on your Leave and Earnings Statement?		

	Yes	No
7. Do any of the following apply to your parent or guardian? (Check all that apply)		
a. Holds the title to real property (home, land) in Texas?		
b. Owns a business in Texas?		
c. Holds a state or local license to conduct a business or practice a profession in TX?		
d. Was in the US Armed Forces and during that time, you filed a DD 2058, indicating TX as your permanent home?		
e. Has a currently-valid Last Will and Testament on file with a clerk in TX, indicating you are a resident of Texas?		
8. For the past 12 months, have your parent or guardian: (Check all that apply)		
a. been gainfully employed in TX?		
b. leased or rented property in his/her name in the state?		
c. received services from a social service agency that provides services to homeless persons?		

Part H. General Comments. Is there any additional information that you believe your college should know in evaluating your eligibility to be classified as a resident? If so, please provide it below:

PART I. Certification of Residency. All students must complete this section.

I understand that officials of my college/university will use the information submitted on this form to determine my status for residency eligibility. I authorize the college/ university to verify the information I have provided. I agree to notify the proper officials of the institution of any changes in the information provided. I certify that the information on this application is complete and correct and I understand that the submission of false information is grounds for rejection of my application, withdrawal of any offer of acceptance, cancellation of enrollment, or appropriate disciplinary action.

Signature: _____ Date: _____

Figure: 19 TAC §21.731(c)

Chart III

AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned Notary Public, on this day personally appeared

_____,
known to me, who being by me duly sworn upon his/her oath, deposed and said:

1. My name is _____. I am ___ years of age and have personal knowledge of the facts stated herein and they are all true and correct.

2. I graduated or will graduate from a Texas high school or received my GED certificate in Texas.

3. I resided in Texas for three years leading up to graduation from high school or receiving my GED certificate.

4. I have resided or will have resided in Texas for the 12 months prior the census date of the semester in which I will enroll in _____ (college/university).

5. I have filed or will file an application to become a permanent resident at the earliest opportunity that I am eligible to do so.

In witness whereof, this _____day of _____, _____.

_____
(Signature)

_____
(Printed Name)

_____
(Student I.D.#)

SUBCRIBED TO AND SWORN TO BEFORE ME, on the _____ day of _____, _____, to certify which witness my hand and official seal.

_____
Notary Public in and for the State of Texas

Figure: 19 TAC §21.733(a)

Chart IV
Documentation to Support Domicile and Residency

The following documentation may be requested by the institution in order to resolve issues raised by the information provided by in response to the Core Residency Questions. The listed documents may be used to establish that the person is domiciled in Texas and has maintained a residence in Texas continuously for 12 months prior to the census date.

Part A **Documentation that can Support the Establishment of a Domicile and Demonstrate the Maintenance of a Residence in Texas for 12 Months**
1. An employer's statement of dates of employment (beginning and current or ending dates) that encompass at least 12 months. Student employment, such as work-study, the receipt of stipends, fellowships or research or teaching assistanceships do not qualify as a basis for establishing a domicile. 2. For a homeless person, written statements from the office of one or more social service agencies located in Texas that attests to the provision of services to the homeless person for the 12 months prior to the census date of the term in which the person enrolls.

Part B **Documentation, which (if accompanied by at least THREE documents listed in Part D), can Support the Establishment of a Domicile and Demonstrate the Maintenance of a Residence in Texas for 12 Months**
Lease or rental of real property, other than campus housing, in the name of the person or the dependent's parent for the 12 months preceding the census date. NOTE: if this is provided as the sole basis of a domicile, the person must be able to provide at least three types of documents (listed in Part D of this Chart) that demonstrate the person's maintenance of a residence for 12 months.

Part C **Documentation, which (if accomplished and maintained for the 12 months prior to the census date of the term in which the person enrolls and if accompanied by at least ONE type of document listed in Part D), can Support the Establishment of a Domicile and Demonstrate the Maintenance of a Residence in Texas for 12 Months**
1. Title to real property in Texas 2. Marriage Certificate with documentation to support that spouse is a domiciliary of Texas 3. Ownership of business in Texas with documents that evidence the organization or the business as a partnership or corporation and reflect the ownership interest of the person or dependent's parent. 4. State or local licenses to conduct a business or practice a profession in this state. 5. Filing of U.S. Armed Forces form DD 2058, indicating Texas as one's permanent residence 6. Execution of a currently-valid Last Will and Testament that has been deposited with a county clerk in Texas, indicating the person is a resident of Texas.

Part D **Documents that May be Used to Demonstrate Maintenance of a Residence for 12 Months**
1. Utility bills for the 12 months preceding the census date; 3. A high school transcript for full senior year preceding the census date; 4. A transcript from an institution showing presence in the state for the 12 months preceding the census date; 5. A Texas driver's license or Texas ID card with an expiration date of not more than four years; 6. Cancelled checks that reflect a Texas residence for the 12 months preceding the census date; 7. A current credit report that documents the length and place of residence of the person or the dependent's parent. 8. Texas voter registration card that has not expired. 9. Pay stubs for the 12 months preceding the census date; 10. Bank statements reflecting a Texas address for the 12 months preceding the census date; 11. Ownership of real property with copies of utility bills for the 12 months preceding the census date. 12. Registration or verification from licensor, showing Texas address for licensee; 13. Written statements from the office of one or more social service agencies, attesting to the provision of services for at least the 12 months preceding the census date.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Requests for Proposals

Notice is hereby given of Requests for Proposals (RFPs) by Texas State Affordable Housing Corporation (TSAHC) to multifamily developers for the development of affordable multifamily housing in Texas financed by private activity bonds (to be issued by TSAHC) and low income housing tax credits (to be issued by the Texas Department of Housing and Community Affairs). The Corporation has set forth specific criteria for the development of multifamily housing in three areas; rehabilitation, senior, and rural housing. Each RFP can be viewed on TSAHC's web site (www.tsahc.org) in the Multifamily Bond Programs section. Proposals under all three RFPs will be due at the TSAHC offices in Austin by 2:00 p.m. on the date specified in each RFP. For rehabilitation and senior proposals the due date is Friday, January 20, 2006 and for rural housing proposals the due date is Friday, March 10, 2006. Any questions about the Requests for Proposals must be emailed or faxed to Cari Garcia at cgarcia@tsahc.org or (512) 477-3557. All questions and responses will be posted on TSAHC's web site.

TRD-200505277
David Long
President
Texas State Affordable Housing Corporation
Filed: November 15, 2005

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Office of the Attorney General

Notice of Resolution of a Texas Health and Safety Code, Texas Water Code and Texas Clean Air Act Enforcement Action

Notice is hereby given by the State of Texas pursuant to Texas Water Code §7.110 of the following proposed resolution of an environmental enforcement lawsuit. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Water Code.

Case Title and Court: ***State of Texas v. Allied Stone Products, L.P.,* Cause No. GV403693, in the 345th District Court, Travis County, Texas**

Nature of Defendant's Operations: Allied Stone operated a stone quarry facility located at 4501 Grindstone Road, Millsap, Texas in Parker County. During investigations at the facility in 2003 and 2004, TCEQ Dallas/Fort Worth Regional Office staff documented noncompliance with restrictions and requirements concerning the discharge of storm water and other industrial waste water. This facility is situated in the watershed of Grindstone Creek and the Brazos River.

Proposed Agreed Judgment: The Agreed Final Judgment requires Allied Stone to pay civil penalties in the amount of $7,000, attorney's fees in the amount of $3,000, and court costs. The judgment also enjoins Allied Stone to comply with the General Permit relating to storm water discharges, as well as the Texas Water Code in general.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Ken Cross, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. To be considered, written comments must be received within 30 days of publication of this notice.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200505298
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: November 16, 2005

♦ ♦ ♦

Notice Regarding Private Real Property Rights Preservation Act Guidelines

The Private Real Property Rights Preservation Act (Act), codified in Chapter 2007 of the Government Code, required the Office of the Attorney General to prepare Guidelines to assist governmental entities in identifying and evaluating those governmental actions that might result in a taking of private real property. Those Guidelines were published in the *Texas Register* on January 12, 1996 (21 TexReg 387). The Act also requires the Attorney General to review the Guidelines at least annually and revise them as necessary "to ensure consistency with the actions of the legislature and the decisions of the United States Supreme Court and the supreme court of this state." See TEX. GOV'T CODE ANN. §2007.041(c) (Vernon 2000). That review has been done annually as required.

This Office published notice of the current annual review in the June 24, 2005, issue of the *Texas Register* (30 TexReg 3743), inviting comments or suggestions concerning the Guidelines. We received neither comments nor suggestions.

The United States Supreme Court issued one decision, *Lingle v. Chevron*, during the review year that requires revisions to the Guidelines. In *Lingle* the Court concluded that the determination whether governmental action "substantially advances a legitimate state interest" is no longer a consideration in takings jurisprudence. Prior iterations of the Guidelines advised affected governmental entities that the "substantially advances" test was one prong of a two-prong proper regulatory takings analysis. The amended Guidelines remove all references to and discussions of the "substantially advances" test.

The Supreme Court issued a second decision that merits discussion here because of the decision's attendant publicity. In *Kelo v. New London*, the Court upheld the exercise of eminent domain for economic revitalization, equating public use and public purpose. *Kelo* spurred the passage of S.B. 7 (79th Legislature Second Called Session.) S.B. 7

limits the use of eminent domain proceedings for economic redevelopment purposes. Neither *Kelo* nor S.B. 7 necessitates amendments to the Guidelines because the subject of each is what constitutes a "public use," not what constitutes a regulatory taking.

The Texas Supreme Court decided no cases during the year under review warranting further updates to the Guidelines.

The revised Guidelines published below incorporate changes necessitated by the *Lingle* decision, make stylistic and grammatical changes, and remove certain no longer relevant historical discussion from the Guidelines as last revised.

Office of the Attorney General

PRIVATE REAL PROPERTY RIGHTS PRESERVATION ACT GUIDELINES

§1.0. GENERAL DESCRIPTION OF THE LEGISLATION; DEFINITION OF "TAKING."

§1.1. PURPOSE OF GUIDELINES.

§1.11. The Private Real Property Rights Preservation Act (Act or PRPRPA) represents a basic charter for the protection of private real property rights in Texas. [1] The Act represents the Texas legislature's acknowledgment of the importance of protecting private real property interests.[2] PRPRPA's purpose is to ensure that certain governmental entities take a "hard look" at their actions on private real property rights, and that those entities act according to the letter and spirit of the Act.[3] PRPRPA is, in short, another instrument to ensure open and responsible government.

§1.12. Section 2007.041 requires the attorney general to:

(a) prepare guidelines to assist governmental entities in identifying and evaluating those governmental actions described in §2007.003(a)(1)-(3) [of the Act] that may result in a taking;

(b) file the guidelines with the secretary of state for publication in the *Texas Register* in the manner prescribed by Chapter 2002 of the Government Code; and

(c) review the guidelines at least annually and revise the guidelines as necessary to ensure consistency with the actions of the legislature and the decisions of the United States Supreme Court and the supreme court of this state.

§1.13. Governmental actions undertaken pursuant to these Guidelines that compel the need to promulgate "Takings Impact Assessments" (TIAs) must ensure that information regarding the private real property implications of governmental actions are considered before decisions are made and actions taken.[4] This information and analysis must be accurate, concise, and of high quality. TIAs must concentrate on the truly significant real property issues. No need exists to amass needless detail and meaningless data. The public is entitled to governmental conformance with legislative will, not a mass of unnecessary paperwork. Nevertheless, the public is entitled to more than mere pro forma analyses by the governmental entities covered by the Act. TIAs shall serve as the means of assessing the impact on private real property, rather than justifying decisions already made.

§1.14. The failure of a governmental entity to promulgate a TIA when one is required will subject the governmental entity to a lawsuit to invalidate the governmental action.[5]

§1.15. CAVEAT. These Guidelines do not represent a formal Attorney General's opinion and should not be construed as an opinion of the Attorney General as to whether a specific governmental action constitutes a "taking." The Act raises complex and difficult issues in emerging areas of law, public policy, and government. These Guidelines are intended to provide guidance as governmental entities seek to conform their activities to the Act's requirements.

§1.2. DEFINITION OF "TAKING."

§1.21. The Act is directed at ensuring that governmental entities undertaking governmental actions covered by the Act do not do so without expressly considering or assessing whether "takings" of private real property may result. The duty to promulgate a TIA represents a critical mechanism in ensuring that requisite attention is paid to the impact of a covered governmental action on real property interests. Governmental entities need to be fully aware of three sets of criteria set forth in the Act defining the scope of what actions may constitute a "taking."

§1.22. The Act, Section 2007.002(5), defines "taking" as follows:

(a) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or

(b) a governmental action that:

(1) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and

(2) is the producing cause[6] of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

§1.23. The Act, Section 2007.002, thus sets forth a definition of "taking" that (i) incorporates current jurisprudence on "takings" under the United States and Texas Constitutions, and (ii) sets forth a new statutory definition of "taking."

(a) The Fifth Amendment to the United States Constitution (the "Takings Clause") provides: "[N]or shall private property be taken for public use, without just compensation." The Takings Clause applies to the states by virtue of the Fourteenth Amendment.[7]

(b) Article I, §17 of the Texas State Constitution provides as follows:

No person's property shall be taken, damaged or destroyed without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money . . .

(c) The Act, §2007.002(5)(B), sets forth a new statutory definition of "taking." Essentially, if a governmental entity takes some "action" covered by the Act and that action results in a devaluation of a person's private real property of 25% or more, then the affected party may seek appropriate relief under the Act. Such an action for relief would be predicated on the assumption that the affected real property was the subject of the governmental action.

§1.3. "REGULATORY TAKINGS" OR "INVERSE CONDEMNATION": GENERAL PRINCIPLES.

§1.31. While there is usually little question that there is a "taking" when the government physically seizes or occupies private real property, there may be uncertainty as to whether a "taking" occurs when the government regulates private real property or activities occurring on private real property, or when the government undertakes some physically non-intrusive action which may have an impact on real property rights. These Guidelines pertain, for the most part, to the non-physical invasion and non-occupancy situations.[8]

§1.32. The Takings Clause "does not bar government from interfering with property rights, but rather requires compensation in the event of otherwise proper interference amounting to a taking.[9] A physically non-intrusive governmental regulation or action that affects the value, use, or transfer of real property may constitute a "taking" if it "goes too far."[10] Regulatory or governmental actions are sometimes difficult to evaluate for "takings" because government may properly regulate or limit the use of private real property, relying on its "police power" authority and responsibility to protect the public health, safety, and welfare of its citizens. Accordingly, government may abate public nuisances, terminate illegal activities, and establish building codes, safety standards, or sanitary requirements generally without creating a compensatory "taking." Government may also limit the use of real property through land use planning, zoning ordinances, setback requirements, and environmental regulations.

§1.33. Governmental actions taken specifically for the purposes of protecting public health and safety may be given broader latitude by courts before they are found to be "takings." However, the mere assertion of a public health and safety purpose should be viewed as insufficient to avoid a taking determination.[11] Actions which are asserted to be for the protection of public health and safety should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and should impose no greater burden than is necessary to achieve the health and safety purpose. Otherwise, the exemptions or exceptions for these actions[12] may swallow the rule set forth by the Act to protect private real property.

§1.34. If a governmental action diminishes or destroys a fundamental real property right-such as the right to possess, exclude others from, or dispose of real property-it could constitute a "taking."[13] Similarly, if a governmental action imposes substantial and significant limitations on real property use, there could be a "taking."[13]

§1.4. CONSTITUTIONAL REGULATORY "TAKINGS" ANALYSES.

§1.41. A governmental action may result in the "taking" of private real property requiring the payment of compensation if it denies an owner economically viable use of his land." Deprivation of economic viability may occur through the denial of development permits, as well as through the application of ordinances or state laws.[14] A plaintiff seeking to challenge a government regulation as an uncompensated taking of private property may proceed . . . by alleging a "physical" taking," a *Lucas*-type "total regulatory taking," a *Penn Central* taking, or a land-use exaction violating the standards set forth in *Nollan* and *Dolan*.[15]

Prior to 2005, the perception existed that a regulation that did not "substantially advance legitimate state interests" could result in a taking. In *Lingle*, however, the Supreme Court rejected that argument and concluded that the "substantially advances" test no longer has a place in takings jurisprudence, and observed that "an inquiry of this nature has some logic in the context of a due process challenge, for a regulation that fails to serve any legitimate governmental objective may be so arbitrary or irrational that it runs afoul of the Due Process Clause."[16]

Governmental actions requiring exactions of property must meet the "rough proportionality test." This test requires a governmental entity to make "some sort of individualized determination that the required dedication is related both in nature and extent to the project's anticipated impact, though a precise mathematical calculation is not required."[17]

§1.42. FEDERAL LAW.

(a) A proper regulatory taking analysis considers the economic impact of the regulation, in particular whether the proposed governmental action interferes with a real property owner's reasonable investment-backed development expectations.[18] For instance, in determining whether a "taking" has occurred, a court, among other things, might weigh the governmental action's impact on vested development rights against the government's interest in taking the action. Defining reasonable investment-backed expectations is a complex, fact-intensive undertaking. In *Reahard v. Lee County*[19], the Eleventh Circuit of the United States Court of Appeals set forth the following set of eight essentially factual issues to be considered in determining whether a private real property owner's "investment-backed development expectations" have been negatively impacted and thus a regulatory taking effected:

1. History of the property (when purchased? how much land purchased? where was the land located? nature of title? composition of the land? how was the land initially used?);

2. History of the development (what was built on the land? by whom? how subdivided? to whom sold? what plats filed? what roads dedicated?);

3. History of zoning and regulation (how and when was the land classified? how was use proscribed? changes in zoning classification?);

4. How did development change when title passed;

5. Present nature and extent of the property;

6. Owner's reasonable expectations under state common law;

7. Neighboring landowners' reasonable expectations under state common law; and

8. Diminution of owner's investment-backed expectations, if any, after passage of the regulation or the undertaking of a governmental action.

(b) If a governmental action prohibits *all* economically viable or beneficial uses of real property, a "taking" occurs, unless the governmental entity can demonstrate that laws of nuisance or other pre-existing limitations on the use of the real property prohibit the proposed uses, or unless the governmental entity can show that there is no interest at stake protected or defined by common law. The United States Supreme Court has acknowledged that it has never clarified the "property interest against which the loss of value is to be measured, but has suggested that a real property owner's "investment-backed development expectations" as shaped by state property law may provide the answer.[20]

(c) In 2002, the United States Supreme Court held that temporary development moratoria are not *per se* takings of property under the Takings Clause. The Court reasoned that "the answer to the abstract question whether a temporary moratorium effects a taking is neither 'yes, always' nor 'no, never'; the answer depends upon the particular circumstances of the case."[21]

§1.43. STATE LAW.

(a) The governmental entity must consider whether there is a taking under state constitutional law (commonly referred to as inverse condemnation). In the non-physical intrusion cases, Texas courts, on a case-by-case basis, have employed several general tests to determine whether a compensable governmental taking has occurred under the provisions of the Texas Constitution, such as:

(1) whether the governmental entity has imposed a burden on private real property which creates a disproportionate diminution in economic value or renders the property wholly useless;

(2) whether the governmental action against the owner's real property interest is for its own advantage[22]; or

(3) whether the governmental action constitutes an unreasonable and direct physical or legal restriction or interference with the owner's right to use and enjoy the property.[23]

(b) In *City of College Station v. Turtle Rock Corporation*, the Texas Supreme Court held that there must be a reasonable connection between an exaction and the need for the property by the government. The court recognized that in order to be a compensable taking, the ordinance must render the entire property "wholly useless" or otherwise cause "total destruction" of the entire tract's economic value. Furthermore, the landowner must show that the ordinance is unreasonable or arbitrary in that particular application.[24]

§1.5. REGULATORY TAKINGS ANALYSIS: NEW STATUTORY FORMULATION.

§1.51. PRPRPA creates a new definition of taking, in addition to judicially-determined takings. The Act, §2007.002(5), provides that a "taking" occurs when a governmental action covered by the Act is a producing cause of a 25% or more reduction in the value of private real property affected by the governmental action. §2007.02(5)(B), however, limits the application of the new definition.[25]

§2.0. APPLICABILITY OF THE ACT.

§2.1. GOVERNMENTAL ACTIONS COVERED.

§2.11(a) Section 2007.003(a) provides that the Act applies only to the following governmental actions:

(1) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure;

(2) an action that imposes a physical invasion or requires a dedication or exaction of private real property;

(3) an action by a municipality that has effect in the extraterritorial jurisdiction of the municipality[26], excluding annexation, and that enacts or enforces an ordinance, rule, regulation, or plan that does not impose identical requirements or restrictions in the entire extraterritorial jurisdiction of the municipality; and

(4) enforcement of a governmental action listed in Subdivisions (1)-(3), whether the enforcement of the governmental action is accomplished through the use of permitting, citations, orders, judicial or quasi-judicial proceedings, or other similar means.

(b) The requirement to do a TIA only applies to §2007.003(a)(1)-(3).[27]

§2.12. The following actions, furthermore, are exempted from coverage of the Act under §2007.003(b):

(a) an action by a municipality except as provided by subsection (a)(3);

(b) a lawful forfeiture or seizure of contraband as defined by Article 59. 01, Code of Criminal Procedure;

(c) a lawful seizure of property as evidence of a crime or violation of law;

(d) an action, including an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by federal law or an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by state law;

(e) the discontinuance or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property;

(f) an action taken to prohibit or restrict a condition or use of private real property if the governmental entity proves that the condition or use constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state;

(g) an action taken out of a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to life or property;

(h) a formal exercise of the power of eminent domain;

(i) an action taken under a state mandate to prevent waste of oil and gas, protect correlative rights of owners of interests in oil or gas, or prevent pollution related to oil and gas activities;

(j) a rule or proclamation adopted for the purpose of regulating water safety, hunting, fishing, or control of nonindigenous or exotic aquatic resources;

(k) an action taken by a political subdivision:

(1) to regulate construction in an area designated under law as a floodplain;

(2) to regulate on-site sewage facilities;

(3) under the political subdivision's statutory authority to prevent waste or protect rights of owners of interest in groundwater; or

(4) to prevent subsidence;

(l) the appraisal of property for purposes of ad valorem taxation;

(m) an action that:

(1) is taken in response to a real and substantial threat to public health and safety;

(2) is designed to significantly advance the health and safety purpose; and

(3) does not impose a greater burden than is necessary to achieve the health and safety purpose; or

(n) an action or rulemaking undertaken by the Public Utility Commission of Texas to order or require the location or placement of telecommunications equipment owned by another party on the premises of a certificated local exchange company.

§2.13. According to §2007.003(c) of the Act, §2007.021 ("Suit Against Political Subdivision") and §2007.022 ("Administrative Proceeding Against State Agency") (collectively, "Action To Determine Taking") do not apply to the enforcement or implementation of a statute, ordinance, order, rule, regulation, requirement, resolution, policy, guideline, or similar measure that was in effect September 1, 1995, and that prevents the pollution of a reservoir or an aquifer designated as a sole source aquifer under the federal Safe Drinking Water Act (42 United States Code, §300h-3(e)).

§2.14. Nor does the Act apply to the enforcement or implementation of the Open Beaches Act, Subchapter B, Chapter 61, Natural Resources Code, as it existed on September 1, 1995, or to the enforcement or implementation of any rule or similar measure that was adopted under that subchapter and was in existence on September 1, 1995.[28]

§2.15. In order to effectuate the will of the legislature and to ensure that the Act is not read either too broadly or too narrowly, each governmental entity covered by the Act should promulgate a set of procedures ("Governmental Entity-Specific TIA Procedures") specific to the governmental entity that defines which of its activities, programs, or policy, rule, or regulation promulgation activities trigger the need for a TIA.[29] Such promulgation of the Governmental Entity-Specific TIA Procedures should be completed as soon as possible after the publication of these Guidelines. However, the promulgation of these TIA procedures must not delay conformance with the Act or these Guidelines.

§2.16. In promulgating the Governmental Entity-Specific TIA Procedures, the governmental entity should establish (1) "Categorical Determination" categories that indicate that there are no private real property

rights affected by certain types of proposed governmental actions, as well as (2) a quick, efficient, and effective mechanism or approach to making "No Private Real Property Impacts Determinations" ("NoPRPI Determinations") associated with the proposed governmental action.

§2.17. Categorical Determinations that no private real property interests are affected by the proposed governmental action would obviate the need for any further compliance with the Act. Without limitations the following are examples of the types of activities that might fall into such a Categorical Determination category: (i) student policies established by state institutions of higher education and (ii) professional qualification requirements for licensed or permitted professionals.

§2.18. NoPRPI Determinations would also obviate the need for any further compliance with the Act once it is determined that there are no private real property interests impacted by a specific governmental action. In such a case, there would be no established Categorical Determination category in which the proposed governmental action fits, but after consideration and preliminary analysis of a specific proposed governmental action, the governmental entity is satisfied that there would be no impacts on private real property interests.

§2.19. Until and unless a covered governmental entity develops Governmental Entity-Specific TIA Procedures, it will have to determine on an ad hoc basis whether any private real property interests are impacted (including to what extent) by its proposed actions. Furthermore, because the TIA necessarily depends on the type of governmental action being proposed and the specific nature of the impacts on specific private real property, the governmental entity promulgating a TIA has discretion (within the parameters of the Act, §2007.043(b)) to determine the precise extent and form of the assessment, on a case-by-case basis.

§3.0. GUIDE TO PROMULGATING TIAS.

§3.1. Requirements for Promulgating TIAs.

The Act, §2007.043(b) requires that the TIA:

(a) describe the specific purpose of the proposed action and identify:

(1) whether and how the proposed action substantially advances its stated purpose; and

(2) the burdens imposed on private real property and the benefits to society resulting from the proposed use of private real property;

(b) determine whether engaging in the proposed governmental action will constitute a taking; and

(c) describe reasonable alternative actions that could accomplish the specified purpose and compare, evaluate, and explain:

(1) how an alternative action would further the specified purpose; and

(2) whether an alternative action would constitute a taking.

(d) A takings impact assessment prepared under this section is public information.

§3.2. Guide for Evaluating Proposed Governmental Actions.

Governmental entities covered by the Act should use the following guide in reviewing the potential impact of a proposed governmental action covered by the Act. While this guide may provide a framework for evaluating the impact on private real property a proposed governmental action may have generally, "takings" questions normally arise in the context of specific affected real property. This guide for evaluating governmental actions covered by the Act is another tool that a governmental entity should aggressively use to safeguard private real property owners.

(a) Question 1: Is the Governmental Entity undertaking the proposed action a Governmental Entity covered by the Act, i.e., is it a "Covered Governmental Entity"? See the Act, §2007.002(1).

(1) If the answer to Question 1 is "No": No further compliance with the Act is necessary.

(2) If the answer to Question 1 is "Yes": Go to Question 2.

(b) Question 2. Is the proposed action to be undertaken by the Covered Governmental Entity an action covered by the Act, i.e., a "Covered Governmental Action"? See §2 of these Guidelines; and Governmental Entity-Specific TIA Procedures for "Categorical Determinations" as developed by the respective Covered Governmental Entities.[30]

(1) If the answer to Question 2 is "No": No further compliance with the Act is necessary.

(2) If the answer to Question 2 is "Yes": Go to Question 3.

(c) Question 3. Does the Covered Governmental Action result in a burden on "Private Real Property" as that term is defined in the Act?

(1) If the answer to Question 3 is "No": A "No Private Real Property Impact" or NoPRPI Determination should be made. No further compliance with the Act is necessary if a NoPRPI Determinations is made. Logically, the initial critical issue regarding any proposed governmental action is whether there is any burden on private real property. If a governmental entity has not resolved this issue by reference to its pre-existing list of Categorical Determinations, it can do so by quickly and concisely making a NoPRPI Determinations.

(2) If the answer to Question 3 is "Yes": A TIA is required and the governmental entity must undertake evaluation of the proposed governmental action on private real property rights.

§3.3. Elements of the TIA As set forth in §3.11 supra, the Act sets forth explicit elements that must be evaluated by the governmental entity proposing to undertake a governmental action covered by the Act.

(a) Question 4. What is the Specific Purpose of the Proposed Covered Governmental Action? The TIA must clearly show how the proposed governmental action furthers its stated purpose. Thus, it is important that a governmental entity clearly state the purpose of its proposed action in the first place, and whether and how the proposed action substantially advances its stated purpose.

(b) Question 5. How Does the Proposed Covered Governmental Action Burden Private Real Property?[31]

(c) Question 6. How Does the Proposed Covered Governmental Action Benefit Society?

(d) Question 7. Does the Proposed Covered Governmental Action result in a "taking"?

Whether a Proposed Covered Governmental Action "burdens," in the first analysis, and ultimately results in a "taking" must be measured against all three prongs of the "takings" analysis outlined in secs.1.2-1.5 of these Guidelines. The Covered Governmental Entity proposing to engage in a Covered Governmental Action should consider the following subquestions:

(1) Does the Proposed Covered Governmental Action Result Indirectly or Directly in a Permanent or Temporary Physical Occupation of Private Real Property?

Regulation or action resulting in a permanent or temporary physical occupation of all or a portion of private real property will generally constitute a "taking." For example, a regulation that required landlords to allow the installation of cable television boxes in their apartments was found to constitute a "taking."[32]

(2) Does the Proposed Covered Governmental Action Require a Property Owner to Dedicate a Portion of Private Real Property or to Grant an Easement?

Carefully review all governmental actions requiring the dedication of property or grant of an easement. The dedication of real property must be reasonably and specifically designed to prevent or compensate for adverse impacts of the proposed development. Likewise, the magnitude of the burden placed on the proposed development should be reasonably related to the adverse impacts created by the development. A court will also consider whether the action in question substantially advances a legitimate state interest.

For example, the United States Supreme Court determined in *Nollan* that compelling an owner of waterfront property to grant a public easement across his property that does not substantially advance the public's interest in beach access, constitutes a "taking."[33] Likewise, the Court held that compelling a property owner to leave a public green way, as opposed to a private one, did not substantially advance protection of a floodplain, and was a "taking."[34]

(3) Does the Proposed Covered Governmental Action Deprive the Owner of all Economically Viable Uses of the Property?

If a governmental action prohibits or somehow denies all economically viable or beneficial uses of the land, it will likely constitute a "taking." In this situation, however, the governmental entity should consider whether it can demonstrate that the proposed uses are prohibited by the laws of nuisance or other preexisting limitations on the use of the property.[35]

It may be important to analyze the action's impact on the property as a whole, and not just the impact on a portion of the property. It is also important to assess whether there is any profitable use of the remaining property available.[36] The remaining use does not necessarily have to be the owner's planned use, a prior use, or the highest and best use of the property. One factor in this assessment is the degree to which the governmental action interferes with a property owner's reasonable investment-backed development expectations.

Carefully review governmental actions requiring that all of a particular parcel of land be left substantially in its natural state. A prohibition of all economically viable uses of the property is vulnerable to a "takings" challenge. In some situations, however, there may be pre-existing limitations on the use of property that could insulate the government from takings liability.

(4) Does the Proposed Covered Governmental Action have a Significant Impact on the Landowner's Economic Interest?

Carefully review governmental actions that have a significant impact on the owner's economic interest. Courts will often compare the value of property before and after the impact of the challenged action. Although a reduction in property value alone may not be a "taking," a severe reduction in property value often indicates a reduction or elimination of reasonably profitable uses. Another economic factor courts will consider is the degree to which the challenged action impacts any development rights of the owner.

(5) Does the Covered Governmental Action Decrease the Market Value of the Affected Private Real Property by 25% or More? Is the Affected Private Real Property the subject of the Covered Governmental Action? See the Act, §2007.002(5)(B).

(6) Does the Proposed Covered Governmental Action Deny a Fundamental Attribute of Ownership?

Governmental actions that deny the landowner a fundamental attribute of ownership-including the right to possess, exclude others and dispose of all or a portion of the property-are potential takings.

The United States Supreme Court has held that requiring a public easement for recreational purposes where the harm to be prevented was to the flood plain was a "taking." In finding this to be a "taking," the Court stated:

The city never demonstrated why a public green way, as opposed to a private one, was required in the interest of flood control. The difference to the petitioner, of course, is the loss of her ability to exclude others. . . [T] his right to exclude others is "one of the most essential sticks in the bundle of rights that are commonly characterized as property."[37]

The United States Supreme Court has also held that barring the inheritance (an essential attribute of ownership) of certain interests in land held by individual members of an Indian tribe constituted a "taking."[38]

(e) Question 8. What are the Alternatives to the Proposed Covered Governmental Action?

Lastly, the governmental entity must describe reasonable alternative actions to the proposed governmental action that could accomplish the specified purpose and compare and evaluate the alternatives. The governmental agency must also evaluate the "takings" implication of each reasonable alternative to the proposed action pursuant to the applicable provisions of these Guidelines.

Following are the endnotes related to these Guidelines:

1. Private real property is defined in the Act, §2007.002(4), to mean an interest in property recognized by common law:

"Private real property" means an interest in real property recognized by common law, including a groundwater or surface water right of any kind, that is not owned by the federal government, this state, or a political subdivision of this state.

2. Furthermore, the Act may reflect a developing, broader appreciation of the importance of private property rights. *See Dolan v. City of Tigard*, 512 U.S. 374 (1994):

We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances.

3. The Act, §2007.002 (1) defines "governmental entity" as:

(A) a board, commission, council, department, or other agency in the executive branch of state government that is created by constitution or statute, including an institution of higher education as defined by Education Code, §61.003; or

(B) a political subdivision of this state.

4. The Act, §2007.043(a) provides:

A governmental entity shall prepare a written takings impact assessment of a proposed governmental action described in §2007.003(a)(1)-(3) that complies with the evaluation guidelines developed by the attorney general under §2007.041 before the governmental entity provides the public notice required under §2007.042.

Section 2007.042 provides:

(a) A political subdivision that proposes to engage in a governmental action described in §2007.003(a)(1)-(3) that may result in a taking shall provide at least 30 days' notice of its intent to engage in the proposed action by providing a reasonably specific description of the proposed action in a notice published in a newspaper of general circulation published in the county in which affected private real property is located. If a newspaper of general circulation is not published in that county, the political subdivision shall publish a notice in a newspaper of general circulation located in a county adjacent to the county in which affected

private real property is located. The political subdivision shall, at a minimum, include in the notice a reasonably specific summary of the takings impact assessment that was prepared as required by this subchapter and the name of the official of the political subdivision from whom a copy of the full assessment may be obtained.

(b) A state agency that proposes to engage in a governmental action described in §2007.003(a)(1) or (2) that may result in a taking shall:

(1) provide notice in the manner prescribed by §2001.023; and

(2) file with the secretary of state for publication in the *Texas Register* in the manner prescribed by Chapter 2002 a reasonably specific summary of the takings impact assessment that was prepared by the agency as required by this subchapter.

5. The Act, §2007.044 provides:

(a) A governmental action requiring a takings impact assessment is void if an assessment is not prepared. A private real property owner affected by a governmental action taken without the preparation of a takings impact assessment as required by this subchapter may bring suit for a declaration of the invalidity of the governmental action.

(b) A suit under this section must be filed in a district court in the county in which the private real property owner's affected property is located. If the affected property is located in more than one county, the private real property owner may file suit in any county in which the affected property is located.

(c) The court shall award a private real property owner who prevails in a suit under this section reasonable and necessary attorney's fees and court costs.

6. A "producing cause" is an "efficient, exciting, or contributing cause, which in the natural sequence, produced injuries of damages complained of, if any." *Union Pump Company v. Allbriton*, 898 S.W.2d 773, 775 (Texas 1995) (citing *Haynes and Boone v. Bowser Bouldin, Ltd.*, 896 S.W.2d 179, 182 (Texas 1995)). An element of "producing cause" is causation in fact. Id. Causation-in-fact requires that the defendant's conduct be a substantial factor in bringing about the plaintiff's injuries, and that the injuries would not have occurred without defendant's conduct. Id. (citations omitted); *C. J. Doe v. Boys Club of Greater Dallas*, 907 S.W.2d 472, 481 (Texas 1995). A "producing cause" need not be foreseeable.

7. *See Chicago, B & Q. R. Co. v City of Chicago*, 166 U.S. 226 (1897).

8. The most easily recognized type of "taking" occurs when government physically occupies private property. Clearly, when the government seeks to use private property for a public building, a highway, a utility easement, or some other public purpose, it must compensate the property owner.

Physical invasions of property, as distinguished from physical occupancies, may also give rise to a "taking" where the invasions are of a recurring or substantial nature. Examples of physical invasions include, among others, flooding and water related intrusions and overflight or aviation easement intrusions.

9. *Lingle v. Chevron*, 544 U.S. ___, 125 S.Ct. 2074, 2084 (2005), *quoting First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 315 (1987) (emphasis in original). The Court went on to note that "if a government action is found to be impermissible-for instance because it fails to meet the 'public use requirement or is so arbitrary as to violate due process--that is the end of the inquiry." *Id.*

10. "The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Company v. Mahon*, 260 U.S. 393, 415 (1922).

11. *Lucas v. South Carolina Coastal Council*, 503 U. S. 1003, 1025 n.12 (1992).

12. See exemptions (6), (7), and (13) of §2007.003(b) of the Act (set forth *infra* in §2.12 of these Guidelines).

13. *Dolan*, 512 U. S. at 391.

14. *Lucas*, 503 U. S. at 1019, 512 U.S. at 385 n. 6.

15. *Lingle*, 125 S.Ct. at 2087.

16. *Lingle*, 125 S.Ct. at 2082-2083.

17. *Dolan*, 512 U. S. at 391. The rough-proportionality test, however, has not been extended beyond the special context of exactions. *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 702 (1999).

18. *Penn Central Trans. Co. v. City of New York*, 438 U. S. 104, 124 (1978).

19. 968 F.2d 1131 (11th Cir.), vacated, 978 F.2d 1212 (11th Cir.), rev'd., 30 F.3d 1412 (1992).

20. *Lucas*, 505 U. S.1003 (1992) at 1016, n.7.

21. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 321 (2002). The Court went on to analyze the circumstances in *Tahoe-Sierra* within the *Penn Central* framework. *Id.; see Penn Central*, 438 U.S. at 124 (regulatory takings jurisprudence characterized by "essentially ad hoc, factual inquiries.")

22. *City of Austin v. Teague*, 570 S.W.2d 389, 393 (Texas 1978).

23. The Texas Supreme Court has held that in order for there to be an inverse condemnation there must be a "direct restriction" on the landowner's use of his property. As used, "direct restriction" is the "actual physical or legal restriction on the property's use such as blocking of access or denial of a permit for development." *Westgate Ltd. v. State*, 843 S.W.2d 448 (1992). Since the court found that the condemnor's unreasonable delay of condemnation proceedings did not rise to the level of a "direct restriction" on the landowner's use of his property, the landowner therefore could not recover damages in a suit for inverse condemnation. 843 S.W.2d at 452.

The court supported its findings with the decisions of two Texas appellate courts. A landowner may not recover in a suit for inverse condemnation even if there is the construction of improvements which would have the ultimate effect of increasing the property's chances of flooding and thus reducing the property's value. 843 S.W.2d at 452 (*citing, Allen v. City of Texas City*, 775 S.W.2d 863, 865 (Tex. App.-Houston [1st. Dist.] 1989, writ denied); *Hubler v. City of Corpus Christi*, 564 S.W.2d 816 (Tex. Civ. App--Corpus Christi 1978, writ ref'd n.r.e.). Moreover, the *Westgate* court reserved the question of whether a cause of action might exist where there is bad faith on the part of the condemnor. 843 S.W.2d at 454.

24. 680 S. W. 2d 802, 806 (Tex. 1984). The *Turtle Rock* holding was cited by the United States Supreme Court in *Nollan*, 107 S.Ct. 3141, 3150, and is consistent with the holding of that opinion.

25. There are limitations to the Act's coverage included in the definition of "taking" in §2007.002(5)(B):

(a) private real property must be affected;

(b) the private real property must be the subject of the governmental action; and

(c) the governmental action must restrict or limit the owner's right to the property that would otherwise exist in the absence of the governmental action.

26. "Extraterritorial jurisdiction" means the unincorporated area, not part of any other city, that is contiguous to the corporate limits of a city. 52 Tex. Jur. 3d Municipalities §85 (1989). The extent of an extraterritorial jurisdiction depends on the population of the city. *See id.; see also* Texas Local Government Code, §42.021.

27. The Act, Section 2007.041(a).

28. *See* 31 TAC §§15.1-15.10.

29. Governmental entities are reminded that Section 2007.003 provides that the Act applies to the following governmental actions:

(1) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure.

30. In 2002, the Texas Supreme Court decided its first case under the Private Real Property Rights Preservation Act. In *Bragg v. Edwards Aquifer Authority*, 71 S.W. 3d 729, 730-731 (2002) the court concluded that the adoption of well permitting rules by an aquifer authority is excepted from the Act as an action "taken under a political subdivision's statutory authority to prevent waste or protect rights of owners of interest in groundwater." The Court also concluded that "the Authority's proposed actions on the Braggs' permit applications constitute 'enforcement of a governmental action,' to which the TIA requirement does not apply."

31. *See* discussion of relevant issues under §3.3(d), *infra*.

32. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

33. *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

34. *Dolan*, 512 U.S. at 394-396.

35. *Lucas*, 505 U. S. at 1029-1032.

36. *Florida Rock Industries, Inc. v. United States*, 18 F.3d 1560 (Fed. Cir. 1994).

37. *Dolan*, 512 U.S. at 393.

38. *Hodel v. Irving*, 481 U.S. 704 (1987).

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200505317
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: November 16, 2005

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 4, 2005, through November 10, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on November 16, 2005. The public comment period for these projects will close at 5:00 p.m. on December 16, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Devon Energy Production Company, L.P.; Location: The project is located in Greens Lake, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 305821; Northing: 3239662. Project Description: The applicant proposes to drill for petroleum resources, install drilling structures, install one of two proposed pipelines (maximum 8-inch line; preferred option is 12,071 feet in length and the alternative option is 12,492 feet in length), bore one proposed pipeline (approximately 5890 feet), construct a rock breakwater for shoreline protection, and discharge approximately 4,500 cubic yards of shell, crushed rock or washed gravel as a base for one proposed well. Furthermore, the applicant proposes to dredge an access channel, which will impact 9.2 acres of mud bay-bottom, and construct a 25.2 acre beneficial use area from the dredged material. CCC Project No.: 06-0042-F1; Type of Application: U.S.A.C.E. permit application #23572 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Port of Houston Authority; Location: The project is located on Greens Bayou, at the confluence of the Houston Ship Channel, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Settegast, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 290500; Northing: 3292700. Project Description: The applicant proposes to amend Permit No. 12643(05) to add East and West Clinton, Rosa Allen, and Peggy Lake Dredge Material Placement Areas. The applicant also proposes to add the following methods of dredging to the authorization: mechanical, water injection dredging, and Silt Blade method. All methods of dredging will only be performed within the approved dredge area. The dredge material from Silt Blading will not be dispersed into the Federal Channel. The dredge material will be kept within the approved dredge area. CCC Project No.: 06-0043-F1; Type of Application: U.S.A.C.E. permit application #12643(05) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Port of Houston Authority; Location: The project is located on Sims Bayou, at the confluence of the Houston Ship Channel, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Settegast, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 283300; Northing: 3289500. Project Description: The applicant proposes to amend Permit No. 14782(02) to add House-Stimson, Glendale, and Filter Bed Dredge Material Placement Areas. The applicant also proposes to add the following methods of dredging to the authorization: mechanical, water injection dredging, and Silt Blade method. All methods of dredging will only be performed within the approved dredge area. The dredge material from Silt Blading will not be dispersed into the Federal Channel. The dredge material will be kept within the approved dredge area. CCC Project No.: 06-0044-F1; Type of Application: U.S.A.C.E. permit application #14782(03) is being evaluated under §10 of the Rivers

and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Port of Houston Authority; Location: The project is located on the Houston Ship Channel, at the Houston Ship Channel Turning Basin and associated wharves, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Settegast, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 278563; Northing: 3293344. Project Description: The applicant proposes to amend Permit No. 17979 to perform maintenance dredging for 10 years. The applicant also proposes to add the following methods of dredging to the authorization: mechanical, water injection dredging, and Silt Blade method. All methods of dredging will only be performed within the approved dredge area. The dredge material from Silt Blading will not be dispersed into the Federal Channel. The dredge material will be kept within the approved dredge area. CCC Project No.: 06-0045-F1; Type of Application: U.S.A.C.E. permit application #17979(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Port of Houston Authority; Location: The project is located in the Jacintoport Slip, along the Houston Ship Channel, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Highlands, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 296000; Northing: 3293000. Project Description: The applicant proposes to amend Permit No. 18576(02) to add the use of the Peggy Lake and Alexander Island Dredge Material Placement Areas, and to perform maintenance dredging for 10 years. The applicant also proposes to add the following methods of dredging to the authorization: mechanical, water injection dredging, and Silt Blade method. All methods of dredging will only be performed within the approved dredge area. The dredge material will not be dispersed into the Federal Channel. The dredge material will be kept within the approved dredge area. CCC Project No.: 06-0046-F1; Type of Application: U.S.A.C.E. permit application #18576(03) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Shell Pipeline Company; Location: The project is located in the Sabine River, north of the confluence with Cow Bayou, and south of the confluence with Adams Bayou, in Orange County, Texas and Cameron Parish, Louisiana. The pipeline will be cut at Latitude 30 degrees 02 minutes 09.79 seconds; Longitude 93 degrees 44 minutes 24.13 seconds (X=3,663,840.32; Y=838,250.23) and at Latitude 30 degrees 02 minutes 05.23 seconds; Longitude 93 degrees 44 minutes 09.39 seconds (X=3,665,208.24; Y=837,850.48). The project can be located on the U.S.G.S. quadrangle map entitled: Orange, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 428664; Northing: 3322807. Project Description: The applicant proposes to abandon a 12-inch pipeline in place. The pipeline is located approximately -37 feet below the channel and -29 feet below the mud line. A temporary work area will result in an impact to 0.12 acre of wetlands. The temporary work area will be verified under Nationwide Permit 12. CCC Project No.: 06-0049-F1; Type of Application: U.S.A.C.E. permit application #23962 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Lower Colorado River Authority; Location: The project is located on the Gulf of Mexico, approximately 5 miles south of the town of Matagorda on one-half mile of pedestrian beach that begins at Matagorda County Park at FM 2031 and the fishing pier and extends east, in Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Matagorda SW, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 209097; Northing: 3166921. Project Description: The applicant proposes to rake sargassum mats off of the beach using a landscape rake pulled behind a tractor. The rake will be set at a height that will skim the sand with minimal disturbance to the beach sand. The sargassum will be deposited into mounds at the base of the dunes without disturbing the dune face. Man-made trash will be hand-picked from the sargassum and removed from the beach and disposed of properly. Some fill may occur below the high tide line will occur as a result of the work. CCC Project No.: 06-0052-F1; Type of Application: U.S.A.C.E. permit application #23354(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200505293
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: November 16, 2005

Comptroller of Public Accounts

Notice of Request for Letter Proposals

Pursuant to Chapters 403 and 404 of the Texas Government Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Treasury Safekeeping Trust Company (Trust Company), issues this Request for Letter Proposals (RFP) from local, qualified, independent law firms with offices in Austin to serve as outside counsel to the Trust Company, a statutory, special-purpose trust company. Any references hereinafter to the "Comptroller" shall include the Trust Company. The individual attorney or attorneys primarily responsible for and performing the legal services required by the Trust Company must be based in the Austin office. Under this RFP, the Comptroller shall select qualified counsel to provide the Trust Company with legal services on an as-needed basis in a variety of general civil matters requiring expertise generally in banking, corporate, partnership, corporate, business, securities, finance, federal taxation, contracts, and administrative, securities and investments law and practice; and must have significant practice in and experience with particularly in alternative investments, including but not limited to, hedge, private equity and real estate funds (Alternative Investments). The Comptroller expects to evaluate respondents and make a contract award no later than January 15, 2006. Respondents must be able to begin providing services on an as-needed basis

immediately and throughout the contract term currently expected to be January 31, 2006 through August 31, 2006, with two (2) additional options to renew at the Trust Company's sole option for one (1) year periods exercised one (1) year at a time, but which may be changed at the discretion of the Trust Company.

Questions and Proposed Contract: Questions concerning this RFP and requests for copies of the proposed sample contract must be in writing and submitted via hand delivery or facsimile no later than Thursday, December 8, 2005, 2:00 pm, Central Zone Time (CZT) to William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, facsimile (512) 475-0973 (Issuing Office). The Comptroller's official response to questions received by this deadline will be posted as an addendum to this Texas Marketplace notice on Friday, December 9, 2005 at 5:00 pm CZT, or as soon thereafter as practical. A copy of the proposed contract will also be posted as an addendum no later than that such time.

Closing Date: An original and four (4) copies of each Letter Proposal must be hand delivered to and received in the Issuing Office at the address specified above no later than 2:00 p.m. (CZT), on Wednesday, December 14, 2005. Proposals received after this date and time will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Content: Letter Proposals must include all of the following information in order to be considered:

1. Transmittal letter that (a) describes specific experience and qualifications of both the law firm (Law Firm) and each proposed partner and associate in each of the requisite areas of practice, specifically highlighting recent experience in representing governmental entities like the Trust Company in similar matters, particularly with respect to the governmental entity investing in Alternative Investments; and (b) outlines Law Firm's understanding of the Trust Company's enabling legislation, other legislation applicable to the Trust Company, and the funds the Trust Company manages;

2. Physical address of Law Firm's Austin offices;

3. Vita for each proposed partner and associate;

4. Proposed hourly rates for each proposed partner and associate and statements as to (a) whether proposed fees are negotiable; (b) how proposed fees compare to recently contracted fees with other governmental entities on similar matters; (c) proposed reimbursement basis for out-of-pocket expenses other than travel; and (d) whether proposed fees are firm throughout expected initial contract term (January 31, 2006 through August 31, 2006);

5. Proposed mechanisms to control and communicate regarding total costs, such as providing the Trust Company with estimates of billable costs prior to beginning specific assignments and timely advising the Trust Company when additional work is required to complete those assignments;

6. Disclosures of conflicts of interest (identifying each and every matter in which the Law Firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Trust Company or to the State of Texas, or any of its boards, agencies, commissions, universities; or elected or appointed officials);

7. Information regarding efforts made by the Law Firm to encourage and develop the participation of minorities and women in the provision of services such as those requested by this RFP; and

8. Confirmation of willingness to comply with the policies, directives and guidelines of the Trust Company and the Attorney General of the State of Texas.

Evaluation and Award Procedure: All qualifying Letter Proposals received by the deadline above will be evaluated based on qualifications, experience and reasonableness of proposed fees. The Comptroller will make the final selection in its sole discretion in the best interests of the Trust Company and the State of Texas. Notice of contract award will be published on the Texas Marketplace and the Texas Register as soon as possible after execution of the contract.

Limitations: The Comptroller reserves the right to accept or reject any or all Letter Proposals submitted in response to this RFP. The Comptroller is not obligated to execute any contract as a result of issuing this RFP. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this RFP. The selected Law Firm's sole compensation shall be limited to contracted amounts in the final negotiated contract. No minimum amount of work or assignments under any resulting contract is guaranteed. No travel expenses will be paid by the Trust Company unless expressly and previously approved by the Trust Company. The Comptroller and the Trust Company may solicit or select other legal counsel to provide the same or similar services at any time.

Summary of Schedule: The anticipated schedule, subject to change by the Trust Company, is as follows: Publication of RFP in *Texas Register* - Friday, November 25, 2005; Posting of RFP on Texas Marketplace - Monday, November 28, 2005; Questions and Requests for Copies of Sample Contract Due - Thursday, December 8, 2005, 2:00 p.m. CZT; Official Responses to Questions Posted - Friday, December 9, 2005; Proposals Due - Wednesday, December 14, 2005, 2:00 p.m. CZT; Contract Execution - January 15, 2006, or as soon thereafter as practical; Services Available - January 31, 2006, or as soon thereafter as practical.

TRD-200505302
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: November 16, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/21/05 - 11/27/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/21/05 - 11/27/05 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment, or other similar purpose.

TRD-200505236
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 14, 2005

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Pegasus Credit Union (Dallas) seeking approval to merge with Magpegasus Federal Credit Union (Midland). Pegasus Credit Union will be the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200505295
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 16, 2005

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from First Service Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Republic Waste Services of Texas, Ltd who work in or are paid from Houston, Texas, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Trans-Tec Machine Inc. and their subsidiaries, affiliates or successors, who work in, are paid or supervised from Houston, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200505294
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 16, 2005

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Fort Worth Community Credit Union, Fort Worth, Texas - See *Texas Register* issue dated July 30, 2004.

FedStar Credit Union, College Station, Texas - See *Texas Register* issue dated August 26, 2005.

City Credit Union, Dallas, Texas - See *Texas Register* issue dated August 26, 2005.

Application(s) to Amend Articles of Incorporation - Approved

Entex South Texas Credit Union, Kenedy, Texas - See *Texas Register* issue dated September 30, 2005.

Gulf Employees Credit Union, Groves, Texas - See *Texas Register* issue dated September 30, 2005.

TRD-200505296
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 16, 2005

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Texas Commission on Environmental Quality

Notice of Public Hearing

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed amendments to 30 TAC Chapter 39, Public Notice, §§39.403, 39.411, 39.419, and 39.420, the repeal of §39.404, and new §39.404; amendments to 30 TAC Chapter 50, Action on Applications and Other Authorizations, §50.113; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, §55.201; 30 TAC Chapter 331, Underground Injection Control, §331.11; new 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities, §§91.10, 91.20, 91.30, 91.100, 91.110, and 91.120; and 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; new Subchapter L, Permits for Specific Designated Facilities, §§116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426, and 116.1428. Section 39.403(b)(8) - (10) and new (f), the repeal of §39.404, and new §39.404 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP). The commission also proposes to withdraw §§39.411, 39.419, and 39.420, as submitted to EPA on July 31, 2002, and proposes to submit §§39.411(a), (b)(1) - (6) and (8) - (10), (c)(1) - (6), and (d); 39.419(a), (b), (d), and (e); and 39.420(a), (b), and (c)(3) and (4) as a revision to the SIP. Chapter 116, new Subchapter L will also be submitted as a revision to the SIP, under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency regulations concerning SIPs.

The proposed rulemaking would implement provisions of House Bill (HB) 2201. HB 2201 identifies the United States Department of Energy's FutureGen research and creates a new set of permitting actions for FutureGen projects, specifically that permits for FutureGen projects are not subject to the contested case hearing process. Chapter 91 would address existing statutory requirements for the permitting and public participation process still applicable to FutureGen projects but eliminate the requirement of a contested case hearing. Chapter 116, new Subchapter L, would eliminate the requirement of a contested case hearing and address existing statutory requirements for the permitting

and public participation process not affected by HB 2201 but still applicable to FutureGen projects.

A public hearing for the proposed rulemaking and SIP revision will be held in Austin on December 20, 2005, at 10:00 a.m., in Building B, Room 201A, at the Texas Commission on Environmental Quality, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs, should contact Joyce Spencer, Office of Legal Services at (512) 239-5017. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Project Number 2005-053-091-PR. Comments must be received by 5:00 p.m. on December 27, 2005. Copies of the proposed rules can be obtained from the commission's web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Michael Wilhoit, Air Permits Division at (512) 239-1222.

TRD-200505200
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 10, 2005

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 111 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, and the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

This rulemaking would eliminate air standards that cannot be scientifically defended. In addition, this rulemaking will make the commission's approach to particulate matter regulation consistent with federal and other state approaches.

A public hearing on this proposal will be held on December 15, 2005, at 2:00 p.m., in Building E, Room 254S, Texas Commission on Environmental Quality, 12100 Park 35 Circle, in Austin, Texas. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs, should contact Joyce Spencer, Office of Legal Services at (512) 239-5017. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-013-111-EN. Comments must be received by 5:00 p.m., January 13, 2006. Copies of the proposed rules can be obtained from the commission's web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Kathy Singleton, Air Quality Planning and Implementation Division, at (512) 239-6098.

TRD-200505199
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 10, 2005

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Notice of Water Quality Applications

The following notices were issued for the period of November 15, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P. O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF AUSTIN which operates the City of Austin Municipal Separate Storm Sewer System (MS4), has applied for a renewal of NPDES Permit No. TXS000401, which authorizes storm water point source discharges to surface water in the state from the City of Austin MS4. The permit will be renewed as TPDES Permit No. WQ0004705000. The MS4 is located in the City of Austin, in Travis, Hays, and Williamson Counties, Texas.

CITY OF DALLAS which operates the City of Dallas Municipal Separate Storm Sewer System (MS4), has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of existing NPDES Permit No. TXS000701. The draft permit would authorize storm water point source discharges to surface water in the state from the City of Dallas Municipal Separate Storm Sewer System. The permit will be renewed as TPDES Permit No. WQ0004396000. The municipal separate storm sewer system (MS4) is located within the corporate boundary of the City of Dallas, in Dallas, Collin, Denton, Rockwall, and Kaufman Counties, Texas.

CITY OF DELL CITY has applied for a renewal of Permit No. 14256-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day via surface irrigation of 74.6 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the state. The facility and disposal site are located approximately 0.75 mile northeast of the intersection of Farm-to-Market Road 1437 and Farm-to-Market Road 2249 in Hudspeth County, Texas.

CITY OF ELECTRA has applied for a renewal of TPDES Permit No. 10020-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 640,000 gallons per day. The facility is located approximately 2 miles southeast of the intersection of Farm-to-Market Road 1739 and State Highway Loop 477 in Wichita County, Texas.

GRIMES COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0011437001, which authorizes the discharge of treated domestic wastewater at a daily aver-

age flow not to exceed 25,000 gallons per day. The facility is located approximately 2.5 miles west of the intersection of Farm-to-Market Road 2445 and Farm-to-Market Road 1774, 0.2 mile north of Farm-to-Market Road 2445, 11 miles east-northeast of the City of Navasota in Grimes County, Texas.

CITY OF HIDALGO has applied for a renewal of TPDES Permit No. 11080-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located east of the City of Hidalgo, approximately 0.5 mile north of U.S. Highway 281 and 0.5 mile east of Farm-to-Market Road 336 in Hidalgo County, Texas.

COUNTY OF HIDALGO has applied for a renewal of TPDES Permit No. 10973-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located approximately 2 miles north of the intersection of Farm-to-Market Roads 88 and 1422, east of Farm-to-Market Road 88, adjacent to the Monte Alto Reservoir in Hidalgo County, Texas.

LEVERETT'S CHAPEL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0011113001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located approximately 400 feet east of State Highway 42, approximately 7,500 feet north of the intersection of State Highway 135 and 42, northeast of the City of Overton in Rusk County, Texas.

CITY OF LINDEN has applied for a renewal of TPDES Permit No. 10429-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located approximately 7,000 feet southeast of the intersection of Farm-to-Market Road 125 and U.S. Highway 59 (Jefferson Highway) in Cass County, Texas.

MOUSER FAMILY LIMITED PARTNERSHIP #1 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014630001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility will be located at 6901 East Farm-to-Market Road 917, approximately 2,500 feet southeast of the intersection of Farm-to-Market Road 917 and Interstate Highway 35 West in Johnson County, Texas.

SABINE RIVER AUTHORITY OF TEXAS has applied for a renewal of Permit No. 10907-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day via surface irrigation of 14.2 acres of non-public access park land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at Wind Point Park via Park Road 55 near Wichita Bay of Lake Tawakoni, approximately 4.5 miles southwest of the intersection of U.S. Highway 69 and Farm-to-Market Road 1571 in Hunt County, Texas.

SAN YGNACIO MUNICIPAL UTILITY DISTRICT has applied for a renewal of Permit No. WQ0013383001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 0.194 million gallons per day via surface irrigation of 72 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the state. The facility and disposal site are located approximately 2.3 miles north-northeast of the intersection of U.S. Highway 83 and Farm-to-Market Road 3169 at San Ygnacio, Zapata County, Texas.

UNITED STATES DEPARTMENT OF THE AIR FORCE which is continuing groundwater remediation activities resulting from base closure of the former Kelly Air Force Base, has applied for a major amendment to TPDES Permit No. WQ0003955000 to authorize the removal of effluent limitations or reduce the monitoring frequencies for various parameter effluent limitations at Outfalls 001, 002, 003, and 004; authorize the discharge of rinsate from groundwater treatment units via Outfalls 001, 002, 003, and 004; clarify Outfall 004 location description; increase the effluent reuse irrigation area from 155 acres to 195 acres; and authorize the use of treated effluent from the groundwater treatment plants associated with Outfalls 001, 002, 003, and 004 for irrigation and reuse. The current permit authorizes the discharge of treated groundwater at a daily average flow not to exceed 1,000,000 gallons per day via Outfalls 001, 002, and 003; the discharge of treated groundwater at a daily average flow not to exceed 150,000 gallons per day via Outfall 004; and the irrigation of 155 acres of the former Lackland Air Force Base Golf Course (formally part of Kelly Air Force Base) with treated groundwater at a hydraulic application rate not to exceed 4.0 acre-feet per acre per year. The facility is located adjacent to Lackland Air Force Base, south of U.S. Highway 90, and east of the intersection of Leon Creek and Military Drive, in the southwest portion of the City of San Antonio, Bexar County, Texas.

CITY OF WASKOM has applied for a renewal of TPDES Permit No. 10378-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 602 Spur 156 in Waskom in Harrison County, Texas.

TRD-200505300
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 16, 2005

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Notice of Water Rights Application

Notices November 10, 2005 through November 14, 2005:

APPLICATION NO. 5003A; The North Texas Municipal Water District (District or Applicant) has applied for an amendment to Water Use Permit No. 5003 to: authorize additional storage (purchased from the United States Army Corps of Engineers) in Lake Texoma, divert and use additional water for municipal and industrial use, transfer water from the Red River Basin to the Trinity River Basin and the Sabine River Basin, change the point of diversion, increase the combined diversion rate, reuse return flows, and use the bed and banks of state watercourses to convey water. Public meetings will be held in the basin of origin and each receiving basin. The application was received on February 2, 2005. Additional information and fees were received on June 8 and August 24, 2005. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on September 28, 2005. The Executive Director has not completed a technical review of the application. The Texas Commission on Environmental Quality (TCEQ) will hold public meetings to receive comments on the application for an amendment filed by the applicant. The public meetings will consist of two parts; an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the Commissioners before reaching a decision on the application and no formal response will be made. During the Formal Comment Period, members of the public may state their comments into the official record. The Executive Director will summarize the formal comments and prepare a written response. The written response will be considered by the Commissioners in their decision-making process and will be available to the public upon request. PUBLIC MEETINGS ARE TO BE HELD: Monday, January 9, 2006 at 7:00 p.m., Grayson County Courthouse, Commissioner's Courtroom,

100 W. Houston, 1st Floor, Sherman, Texas 75090; Tuesday, January 10, 2006 at 7:00 p.m., University Drive Court Facility, Central Jury Room, 1800 N. Graves, 1st Floor, McKinney, Texas 75069; and Thursday, January 12, 2006 at 7:00 p.m., Hunt County Courthouse, Commissioner's Courtroom, 2500 Lee Street, 2nd Floor, Greenville, Texas 75401. Citizens are encouraged to submit written comments anytime during the meetings or by mail before the meetings to the Office of the Chief Clerk, TCEQ, MC 105, P. O. Box 13087, Austin, Texas, 78711-3087. If you need more information, please call the TCEQ Office of Public Assistance, toll free at 1-800-687-4040. This application is subject to the obligations of the State of Texas pursuant to the terms of the Red River Compact. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. For a complete copy of the issued notice, view the complete notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice.

Application No. 5908; Energy Transfer Fuel, LP, 800 E. Sonterra Blvd., Suite 400, San Antonio, Texas 78258, applicant, seeks a temporary Water Use Permit, pursuant to Texas Water Code, §11.138 and Texas Commission on Environmental Quality Rules, 30 TAC 295.1, et seq. Energy Transfer Fuel, LP seeks the temporary water use permit to divert 11.3 acre-feet of water within a period of one year from the Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin, at a maximum diversion rate of 6.68 cfs (3,000 gpm) for industrial purposes (hydrostatic test of pipeline) in Denton County. The diversion point is located at Latitude 33.31 N, Longitude 97.04 W, near the Elm Fork Trinity River crossing at FM 428, 8.3 miles northeast from the City of Denton and 3.8 miles west from Aubrey, a nearby town. The temporary permit, if issued, will be junior in priority to all senior and superior water rights in the Trinity River Basin. The Commissioners will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on July 8, 2005 and additional information and fees were received on September 6 and October 6, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on October 17, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by December 5, 2005.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P. O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200505299
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 16, 2005

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on November 7, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Harisar Petroleum, Inc. dba Fina Quick Mart; SOAH Docket No. 582-05-7372; TCEQ Docket No. 2003-1072-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Harisar Petroleum, Inc. dba Fina Quick Mart on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 North Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200505301
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 16, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 27, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the appli-

cable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P. O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 27, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Allied Construction Supplies Corporation; DOCKET NUMBER: 2005-1237-AIR-E; IDENTIFIER: Regulated Entity Reference Number (RN) 100800077; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry-mix concrete; RULE VIOLATED: 30 TAC §111.111(a)(1)(B) and THSC, §382.085(b), by failing to prevent visible emissions; PENALTY: $640; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Aqua Development, Inc.; DOCKET NUMBER: 2005-1392-PWS-E; IDENTIFIER: RN101410405; LOCATION: Pflugerville, Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level (MCL) for total trihalomethanes (TTHM); and 30 TAC §290.51(a) and the Code, §5.702, by failing to pay their public health service fees; PENALTY: $645; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(3) COMPANY: Aquilla Water Supply District; DOCKET NUMBER: 2005-1515-PWS-E; IDENTIFIER: RN101439909; LOCATION: Hillsboro, Hill County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the MCL for TTHM and haloacetic acid (HAA5); PENALTY: $1,028; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: B. K. Trading Inc. dba Speedy Stop 2; DOCKET NUMBER: 2005-1156-PST-E; IDENTIFIER: RN102717212; LOCATION: Paris, Lamar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to conduct proper release detection for the piping associated with the underground storage tank (UST) system; and 30 TAC §334.8(c)(5)(C), by failing to ensure that all USTs are properly identified; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: BP Amoco Chemical Company; DOCKET NUMBER: 2005-1151-AIR-E; IDENTIFIER: RN102536307; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit a final report within the required two-week time frame for an emissions event; and 30 TAC §116.110(a) and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; PENALTY: $2,413; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: C. Bonner & Son Auto Crushing, Inc.; DOCKET NUMBER: 2005-1483-MLM-E; IDENTIFIER: RN103783411; LOCATION: near Troup, Cherokee County, Texas; TYPE OF FACILITY: auto crushing; RULE VIOLATED: 30 TAC §328.56(d)(2), by failing to obtain a scrap tire storage registration; and 30 TAC §335.4, by failing to dispose of industrial solid waste in such a manner to prevent the endangerment of public health and welfare; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(7) COMPANY: Campbell Gas & Oil Company, Inc.; DOCKET NUMBER: 2005-0967-IWD-E; IDENTIFIER: RN100256338; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG830150, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for lead, benzene, toluene, and ethyl benzene; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Commercial Lubricants Corporation; DOCKET NUMBER: 2005-1167-PST-E; IDENTIFIER: RN100525344; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: petroleum products retailer with sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vi) and (B) and (5)(A)(i) and the Code, §26.3467(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed and submitted and by failing to make available a valid, current delivery certificate; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to conduct proper release detection and by failing to test the line leak detectors; and 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; PENALTY: $4,680; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Culebra Phillips Mart, Inc. dba Culebra Phillips 6; DOCKET NUMBER: 2005-1456-PST-E; IDENTIFIER: RN100712512; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $2,280; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Dessau Fountains Estates, L.L.C.; DOCKET NUMBER: 2005-0509-MWD-E; IDENTIFIER: RN102080637; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12733001, and the Code, §26.121(a), by failing to comply with the effluent discharge limits for ammonia nitrogen and chlorine residual; PENALTY: $13,300; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(11) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 2005-1111-AIR-E; IDENTIFIER: RN100210517; LOCATION: Sunray, Moore County, Texas; TYPE OF FACILITY: petrochemical; RULE VIOLATED: 30 TAC §101.201(b)(7) and THSC, §382.085(b), by failing to include all of the required information in the final reports; 30 TAC §116.117(a), Permit Number 9708/PSD-TX-861M2, and THSC, §382.085(b), by failing to control emissions to the atmosphere; and 30 TAC §205.6 and §290.51(a)(3) and the Code, §5.702, by failing to pay public health service and general permit storm water fees; PENALTY:

$3,411; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(12) COMPANY: East Texas Asphalt Company, Limited; DOCKET NUMBER: 2005-1305-AIR-E; IDENTIFIER: RN101965150; LOCATION: Livingston, Polk County, Texas; TYPE OF FACILITY: asphalt production; RULE VIOLATED: 30 TAC §101.201(e) and (g) and THSC, §382.085(b), by failing to report an excess opacity event; 30 TAC §§101.20(1), 111.111(a)(1)(B), and 116.115(c), 40 Code of Federal Regulations (CFR) §60.92(a)(2), Air Permit Number 35007B, and THSC, §382.085(b), by failing to maintain an opacity limit below the required 5% limit; and 30 TAC §116.115(c), Air Permit Number 35007B, and THSC, §382.085(b), by failing to prevent visible emissions from leaving the plant property and by failing to maintain a maximum mix temperature of the asphalt concrete below 340 degrees; PENALTY: $2,800; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Enviroclean Management Services, Inc.; DOCKET NUMBER: 2005-1033-MSW-E; IDENTIFIER: RN101478782; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: medical waste transportation; RULE VIOLATED: 30 TAC §330.5(a)(3), by failing to prevent the disposal of medical waste at an unauthorized facility; and 30 TAC §330.1005(g)(1)(D) and (2), by failing to have the identification on the two sides and back of the cargo-carrying compartment in letters at least three inches high and by failing to have the floor and sides of the cargo compartment of the vehicle made of an impervious, nonporous material; PENALTY: $5,880; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Ergon Asphalt & Emulsions, Inc.; DOCKET NUMBER: 2005-1163-IWD-E; IDENTIFIER: RN102286267; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: asphalt emulsions; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0003209000, and the Code, §26.121(a), by failing to comply with its permit effluent limits for total suspended solids (TSS); PENALTY: $1,016; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: City of Floresville; DOCKET NUMBER: 2005-1066-MWD-E; IDENTIFIER: RN101916336; LOCATION: Floresville, Wilson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number 10085-001, by failing to properly manage sludge, by failing to prevent an unauthorized discharge of sewage sludge, by failing to comply with minimum permitted effluent limits of one milligram per liter for the chlorine residual value, by failing to comply with the monitoring requirements for daily sampling of chlorine residual, and by failing to submit an annual sludge summary report; and 30 TAC §317.4(a)(8), by failing to have the drinking water supply backflow prevention device tested annually; PENALTY: $9,696; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Galveston County Water Control & Improvement District No. 1; DOCKET NUMBER: 2002-1167-MWD-E; IDENTIFIER: RN102181377; LOCATION: Dickinson, Galveston County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10173-001, and the Code, §26.121(a), by exceeding the permit limits; PENALTY: $27,000; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Melinda Lee dba Garrison Fina; DOCKET NUMBER: 2005-1322-PST-E; IDENTIFIER: RN102224516; LOCATION: Garrison, Nacogdoches County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to monitor all USTs for releases; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: City of Hemphill; DOCKET NUMBER: 2005-1073-PWS-E; IDENTIFIER: RN101254381; LOCATION: near Hemphill, Sabine County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM and HAA5; PENALTY: $1,290; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Heroes Quick Stop, Inc. dba Wez Mart 2; DOCKET NUMBER: 2005-1046-PST-E; IDENTIFIER: RN102050994; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to make available legible copies of all required records for inspection; 30 TAC §334.7(d)(3), by failing to amend, update, or change information on the UST registration; 30 TAC §334.8(c)(4)(A)(vii), (5)(A)(i) and (iii), (B)(ii), and (C), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form, by failing to make available to a common carrier a valid, current delivery certificate, by failing to ensure that a valid, current delivery certificate is posted at the facility, and by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Jackson County Water Control and Improvement District Number 2; DOCKET NUMBER: 2005-1256-MWD-E; IDENTIFIER: RN102185071; LOCATION: Vanderbilt, Jackson County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10196-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitation for TSS, five-day biochemical oxygen demand (BOD_5), pH, and flow; PENALTY: $9,120; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(21) COMPANY: Lackland Mart Inc. dba Valley Hi 66 1; DOCKET NUMBER: 2005-1362-PST-E; IDENTIFIER: RN100695774; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $2,720; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: Harmen Waterlander dba Linquenda Dairy; DOCKET NUMBER: 2005-1270-AGR-E; IDENTIFIER:

RN102670114; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.39(b)(1) and (5), by failing to maintain sufficient available capacity to store all runoff from a 25-year, 24-hour rainfall event and by failing to prevent tree growth on the embankments of the retention control structures; 30 TAC §321.31(a), by failing to prevent a discharge of waste or wastewater from animal feeding operations; 30 TAC §321.46(a)(4), by failing to amend the pollution prevention plan prior to any change in design, construction, operation, or maintenance; 30 TAC §321.36(k), by failing to maintain a permanent marker in the wastewater retention facilities to show the predetermined minimum treatment volume; and 30 TAC §321.44(b)(1), by failing to document the monitoring results for the unauthorized discharge; PENALTY: $6,627; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Mackenzie Municipal Water Authority; DOCKET NUMBER: 2005-1414-PWS-E; IDENTIFIER: RN101452167; LOCATION: Silverton, Briscoe County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM and HAA5; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(24) COMPANY: City of Muenster; DOCKET NUMBER: 2005-0596-MWD-E; IDENTIFIER: RN102065448; LOCATION: Muenster, Cooke County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10341-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limit for daily average ammonia nitrogen and flow; PENALTY: $6,576; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: PD Glycol; DOCKET NUMBER: 2005-0633-AIR-E; IDENTIFIER: RN100825413; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 3361A, and THSC, §382.085(b), by failing to prevent emissions from sources not authorized by the permit; PENALTY: $9,840; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(26) COMPANY: Port Elevator-Brownsville, L.C.; DOCKET NUMBER: 2005-1011-AIR-E; IDENTIFIER: RN100841535; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: grain storage and handling; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization to operate a source of air emissions; and 30 TAC §111.111(a)(1)(A) and THSC, §382.085(b), by failing to operate under the 30% opacity limit averaged over a six-minute period; PENALTY: $16,800; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(27) COMPANY: Rescar, Inc.; DOCKET NUMBER: 2005-1532-AIR-E; IDENTIFIER: RN100683002; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: facility for cleaning empty railcars; RULE VIOLATED: 30 TAC §122.145(2)(A) and §122.146(2), by failing to submit the annual permit compliance certification and the associated deviation report; PENALTY: $1,620; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: S & J Oil Company, Inc. dba Moss Lake Community Store; DOCKET NUMBER: 2005-1126-PST-E; IDENTIFIER: RN101279982; LOCATION: Gainesville, Cooke County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and (B)(ii), by failing to renew a delivery certificate and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $1,232; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Sadash Corporation dba Knob Hill Kwik Stop; DOCKET NUMBER: 2005-1214-PST-E; IDENTIFIER: RN101568988; LOCATION: Azle, Parker County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,920; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: Sam Rayburn Water, Inc.; DOCKET NUMBER: 2005-1228-PWS-E; IDENTIFIER: RN101274165; LOCATION: near Lufkin, San Augustine County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: $323; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(31) COMPANY: Shine Enterprises, Inc. dba Fuel Express; DOCKET NUMBER: 2005-1015-PST-E; IDENTIFIER: RN104216684; LOCATION: Seguin, Guadalupe County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.50(b)(1)(A) and (2) and the Code, §26.3475(a) and (c)(1), by failing to monitor USTs for releases and by failing to provide proper release detection; 30 TAC §334.10(b)(2)(B)(iv) - (vii), by failing to provide records that document compliance with daily inventory control and monthly reconciliation requirements; and 30 TAC §334.8(c)(5)(A)(i) and (B)(ii) and the Code, §26.3467(a), by failing to make available a valid, current delivery certificate and by failing to submit the UST registration and self-certification forms; PENALTY: $11,340; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(32) COMPANY: Southern Ready Mix, Inc.; DOCKET NUMBER: 2005-1245-MLM-E; IDENTIFIER: RN1043865891; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000, and 40 CFR §122.26(c), by failing to develop and implement a storm water pollution prevent plan; 30 TAC §305.42 and the Code, §26.121(a), by failing to prevent the unauthorized discharge of truck wash water; 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial solid waste or municipal hazardous waste; and 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000, and 40 CFR §122.26(c), by failing to conduct quarterly benchmark monitoring for TSS and iron, by failing to visually examine storm water discharges, by failing to conduct an annual comprehensive site compliance evaluation, and by failing to conduct hazardous metal monitoring; PENALTY: $10,800; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: Sunoco Partners Marketing & Terminals L.P.; DOCKET NUMBER: 2005-0519-AIR-E; IDENTIFIER: Air Account Number JE0091L, RN101214626; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: petroleum storage terminal; RULE VIOLATED: 30 TAC §116.115(c), §122.143(4), Permit Numbers 1980, 5415, 5691, 5757, 56508, and O-1573, and THSC, §382.085(b), by failing to equip 11 open-ended valves or lines with a cap, blind flange, plus, or a second valve, by failing to monitor components two inches and smaller, by failing to monitor 349 valves during the first quarter of 2004, by failing to identify the dock flare fugitive components that are exempt from monitoring and include them on the excluded equipment list, and by failing to properly conduct fugitive emission monitoring; 30 TAC §106.8(c)(2)(A) and (B), (5) and (6), and THSC, §382.085(b), by failing to maintain records sufficient to demonstrate compliance with all applicable general requirements; 30 TAC §106.6(c) and THSC, §382.085(b), by failing to monitor tanks; and 30 TAC §122.145(2)(A) and (B) and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: $76,062; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(34) COMPANY: Taylor Petroleum Companies, Inc.; DOCKET NUMBER: 2005-1349-PWS-E; IDENTIFIER: RN101885069; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine bacteriological samples and by failing to post notice of the failure to collect routine bacteriological samples; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(35) COMPANY: Texas Crude Energy, Inc.; DOCKET NUMBER: 2005-1500-AIR-E; IDENTIFIER: RN101975571; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.146(2), Federal Operating Permit Number O-02527, and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: $3,080; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(36) COMPANY: Hasan Abdullalif dba Texas Pride; DOCKET NUMBER: 2005-1194-PST-E; IDENTIFIER: RN102475985; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,424; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(37) COMPANY: Travis County Municipal Utility District Number 10; DOCKET NUMBER: 2005-1260-PWS-E; IDENTIFIER: RN101422533; LOCATION: Lago Vista, Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the MCL for TTHM and HAA5; PENALTY: $655; ENFORCEMENT COORDINATOR: Joseph Daley (512) 239-3308; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(38) COMPANY: Waterco, Inc. dba Deep Water Plantation Water Company; DOCKET NUMBER: 2005-1227-PWS-E; IDENTIFIER: RN101260669; LOCATION: Huntsville, Walker County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: $313; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(39) COMPANY: William R. Massey, Limited dba Lubrication Service, Inc.; DOCKET NUMBER: 2005-0387-UIC-E; IDENTIFIER: Solid Waste Registration Number 83938, RN100636893; LOCATION: Odessa, Ector County, Texas; TYPE OF FACILITY: industrial machining; RULE VIOLATED: 30 TAC §331.5(a) and the Code, §26.121(a) and §27.011, by having operated a Class V injection well in a manner which would allow the pollution of an underground source of drinking water; PENALTY: $800; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

TRD-200505255
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 15, 2005

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comment on proposed payment rates for the Residential Care (RC) program, assisted living/residential care services under the Community Based Alternatives (CBA AL/RC) program and assisted living/residential care services under the Consolidated Waiver (CW) program. These programs are operated by the Department of Aging and Disability Services (DADS). These payment rates are proposed to be effective January 1, 2006. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on December 13, 2005, at 9:00 a.m. in the Permian Basin Meeting Room 1023 of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis, P.O. Box 85200, MC H-400, Austin, Texas 78708-5200. Express mail can be sent, or written comments can be hand delivered, to Mr. Arreola, HHSC Rate Analysis, MC H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola by telephone at (512) 491-1358.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, HHSC Rate Analysis, P.O. Box 85200, MC H-400, Austin, Texas 78708-5200, telephone number (512) 491-1358, by December 8, 2005, so that appropriate arrangements can be made.

Methodology and justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.509(c)(2)(F)(iv) for the RC program, 1 TAC §55.503(d)(2)(A) for the CBA AL/RC program, and 1 TAC §355.506(a) for the CW program.

TRD-200505278

Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: November 15, 2005

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Department of State Health Services

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Becker Parkin Dental Supply Company, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Becker Parkin Dental Supply Company, Inc. (registrant R19293-001) of Hempstead, NY. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505310
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 16, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Bill's Dental Equipment

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Bill's Dental Equipment (Registrant R18300-000) of Fort Worth. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505307
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 16, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant David W. Murphy

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to David W. Murphy (registrant R20851-000) of Georgetown. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505308
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 16, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Medical Center Imaging, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Medical Center Imaging, Inc. (license #R26699-000) of Houston. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 TAC Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505212
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 10, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant HTS, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to HTS, Inc. (license L02757-000) of Houston. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505309
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 16, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant R.D. Whittington, D.M.D., Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to R.D. Whittington, D.M.D., Inc., (unregistered) of Amarillo. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange

Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505311
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 16, 2005

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Notice of Revocation of Certificates of Registration

The Department of State Health Services, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following certificates of registration: Oakley Chiropractic Clinic, New Caney, R00872, October 31, 2005; Valley Veterinary Hospital, Edinburg, R01150, October 31, 2005; Curtis E. Dill, D.D.S., Mesquite, R15552, October 31, 2005; Oatman Chiropractic, Medina, R19788, October 31, 2005; West Texas Orthopedics and Sports Medicine, El Paso, R20784, October 31, 2005; Oncology Maintenance Services, Plano, R21293, October 31, 2005; SKWD, Quinlin, R23264, October 31, 2005; Joseph A. Lopez, M.D., P.A., Denton, R25518, October 31, 2005; CTR ORR, Inc., Greenville, R25823, October 31, 2005; DDI Dynamic Details, LP, Dallas, R26305, October 31, 2005; Ultrascan, Inc., Sanger, R26853, October 31, 2005; Talamantez Chiropractic, Austin, R26888, October 31, 2005; Christopher L. Harris, Houston, Z01673, October 31, 2005.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505312
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 16, 2005

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Notice of Revocation of the Radioactive Material License of X-Cel NDE, Inc.

The Department of State Health Services, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following radioactive material license: X-Cel NDE, Inc., Odessa, L03548, October 31, 2005.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505313
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 16, 2005

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by COLLECTORS INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Traverse City, Michigan.

Application to change the name of CALIFORNIA INDEMNITY INSURANCE COMPANY to DALLAS NATIONAL INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Application for admission to the State of Texas by G. U. I. C. INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Amelia, Ohio.

Application to change the name of MIC LIFE INSURANCE CORPORATION to PERICO LIFE INSURANCE COMPANY, a foreign life, accident and/ or health company. The home office is in Wilmington Delaware.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200505305
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 16, 2005

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of EMPLOYEE BENEFIT MANAGEMENT SERVICES, INC., a foreign third party administrator. The home office is BILLINGS, MONTANA.

Application for admission to Texas of LOTSOLUTIONS, INC., a foreign third party administrator. The home office is NASHVILLE, GEORGIA.

Application for admission to Texas of BMI BENEFITS, L.L.C., a foreign third party administrator. The home office is MATAWAN, NEW JERSEY.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200505306
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 16, 2005

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Texas Lottery Commission

Instant Game Number 667 "Quick Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 667 is "QUICK CASHWORD". The play style is "key symbol match with a prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 667 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 667.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and blackened square.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 667 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
■	

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 667 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
TEN	$10.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00 or $10.00.

H. Mid-Tier Prize - A prize of $50.00.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (667), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 667-0000001-001.

L. Pack - A pack of "QUICK CASHWORD" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; tickets 005 to 009 on the next page etc.; and tickets 245 to 250 will be on the last page. Tickets 001 and 250 will be folded down to expose the pack -ticket number through the shrink-wrap. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "QUICK CASHWORD" Instant Game No. 667 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "QUICK CASHWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 60 (sixty) possible play symbols. The player must scratch off all 12 (twelve) boxed squares in the YOUR LETTERS play area to reveal 12 play symbol letters; then scratch the corresponding letters found in the QUICK CASHWORD puzzle grid play area. If a player scratches at least two (2) complete "words" in the QUICK CASHWORD puzzle grid play area, the player will win the corresponding prize indicated in the prize legend. For each of the 12 play symbol letters revealed in YOUR LETTERS play area, the player must reveal the identical key play symbol letter in the QUICK CASHWORD puzzle grid play area. Letters combined to form a complete "word" must appear in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the QUICK CASHWORD puzzle grid. Only letters within the QUICK CASHWORD puzzle grid that are matched with the YOUR LETTERS can be used to form a complete "word". The three (3) small letters outside the squares in the YOUR LETTERS area are for validation purposes and cannot be used to play QUICK CASHWORD. In the QUICK CASHWORD puzzle grid, every lettered square within an unbroken horizontal or vertical sequence must be matched with the YOUR LETTERS to be considered a complete "word". Words within a word are not eligible for a prize. A complete "word" must contain at least three letters. Letters combined to form a complete "word" must appear in an unbroken vertical (top to bottom) or horizontal (left to right) string of letters in the QUICK CASHWORD. To form a complete word, an unbroken string of letters cannot be interrupted by a block space. Any other words contained within a complete word are not added or counted for purposes of prize legend. Every single letter in the vertical or horizontal (left to right)‘ unbroken string must: (a) be one of the 12 larger outlined play symbols letters revealed in the play area, YOUR LETTERS, and (b) be included to form a complete "word". The possible complete words for this ticket are contained in the QUICK CASHWORD play area. Each possible complete word must consist of three (3) or more letters and occupy an entire word space. Players must match all of the play symbol letters to the identical key play symbols in a possible complete word in order to complete the word. If the letters revealed form two (2) or more complete words each of which occupy a complete word space on the QUICK CASHWORD play area, the player will win the corresponding prize shown in the prize legend for forming that number of complete words. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Sixty (60) possible Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery’s codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have 60 (sixty) possible Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 60 (sixty) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 60 (sixty) possible Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A ticket will win as indicated by the prize structure.

B. Consecutive non-winning tickets within a book will not have identical patterns.

C. Each ticket consists of a Your Letters area and one QUICK CASHWORD Puzzle Grid.

D. All QUICK CASHWORD Puzzle Grid configurations will be formatted within a grid that contains 6 spaces (height) by 8 spaces (width).

E. Each word will only appear once per ticket on the QUICK CASHWORD Puzzle Grid.

F. Each letter will only appear once per ticket in the YOUR LETTERS play area.

G. There will be a minimum of three (3) vowels in the YOUR LETTERS play area.

H. The positioning of the vowels in the YOUR LETTERS play area will be randomly and approximately evenly placed over all twelve positions.

I. The length of words found in the QUICK CASHWORD Puzzle Grid will range from 3-7 letters.

J. Only words from the approved word list will appear in the QUICK CASHWORD Puzzle Grid.

K. None of the prohibited words (see attached list) will appear horizontally (in either direction), vertically, (in either direction) or diagonally (in either direction). In addition, when all rows of the YOUR LETTERS are joined together into a single continuous row of letters (first row, followed by second row, etc.), none of the prohibited words will appear in either the forward or reverse direction.

L. You will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR LETTERS play area that matches a word in the QUICK CASHWORD Puzzle Grid.

M. Each QUICK CASHWORD Puzzle Grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted Crossword puzzles (i.e. the same grid), all "approved words" will appear in every logical (i.e. 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e. will not place the word ZOO in a position that causes an intersecting word to require the second letter to be "Z", when in fact, there are no approved words with a "Z" in the second letter position).

N. No one (1) letter, with the exception of vowels, will appear more than seven (7) times in the QUICK CASHWORD Puzzle grid.

O. No ticket will match seven (7) words or more.

P. Each Quick Cashword Grid will contain the following:

2 sets of 3 letter words

3 sets of 4 letter words

2 sets of 5 letter words

1 set of 6 letter words

1 set of 7 letter words

Q. Each ticket may only win one (1) prize.

R. Two (2) to six (6) completed words will be revealed as per the prize structure.

S. All non-winning tickets will contain one (1) completed word.

T. Each Your Letter (all 12) will match at least one letter in the QUICK CASHWORD play area, 15% of the time. The other 85% will be split between 10 and 11 letters that will match at least one letter in the QUICK CASHWORD play area.

U. 100 % of the tickets will have at least three (3) words as a near-win. A near win is defined as a word with all letters less one (1) revealed in the QUICK CASHWORD Puzzle Grid. (For example, using the word EYE and EAGLE. If missing the letter "E" these words would be considered a near win)

2.3 Procedure for Claiming Prizes.

A. To claim a "QUICK CASHWORD" Instant Game prize of $1.00, $2.00, $10.00, or $50.00, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "QUICK CASHWORD" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "QUICK CASHWORD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "QUICK CASHWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "QUICK CASHWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,960,000 tickets in the Instant Game No. 667. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 667 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,762,560	7.35
$2	881,280	14.71
$10	155,520	83.33
$50	51,840	250.00
$1,000	100	129,600.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.55. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 667 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 667, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200505256
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 15, 2005

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Texas Parks and Wildlife Department

Notice of Availability and Request for Comment

Proposed Draft Natural Resource Damage Assessment and Restoration Plan

AGENCIES: Texas Parks and Wildlife Department (TPWD), Texas Commission on Environmental Quality (TCEQ), and Texas General Land Office (GLO); (collectively the Natural Resource Trustees).

ACTION: Notice of Availability of a proposed Draft Damage Assessment and Restoration Plan (DARP) for injuries to natural resources resulting from the November 3, 2003 release of a hazardous substance to the Texas City Channel, in the Texas City Harbor in Galveston Bay from a barge owned and operated by Echo Towing and carrying a cargo of concentrated sulfuric acid owned by Martin Product Sales L.L.C. of Kilgore, Texas ("Martin"). Notice is also given for a 30-day period for public comment on this document beginning the date of publication of this notice.

SUMMARY: Notice is hereby given that the Natural Resource Trustees propose a Draft Damage Assessment and Restoration Plan (DARP) to compensate for injuries to natural resources resulting from the November 3, 2003 release of approximately 235,000 gallons of concentrated sulfuric acid, from a capsized barge at the Sterling Chemicals Terminal into the Texas City Harbor and Texas City Ship Channel ("the Channel") in Galveston Bay, Galveston County, Texas ("Incident"). The document describes the process followed by the Natural Resource Trustees to evaluate injuries to natural resources as a result of the release, determine appropriate restoration alternatives, and select the preferred alternative identified in the plan. This preferred alternative is proposed for implementation using funds recovered by the Natural Resource Trustees as part of the previously noticed and finalized June 2005 Settlement under the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA) of natural resource damages claims associated with the Incident. The Trustees propose to utilize the $178,000.00 recovered under the Settlement to provide for the construction of a minimum of 3.81 acres of tidal marsh in the southwest portion of the Galveston Bay system in the vicinity of Virginia Point.

The opportunity for public review and comment on the Draft DARP announced in this notice is required under CERCLA (42 USC §9622(i) and parallels the provisions included in 43 Code of Federal Regulations (CFR) §11.32(c), §11.81, and §11.82 of the federal Natural Resource Damage Assessment regulations.

To receive a copy of the Draft Restoration Plan, interested members of the public are invited to contact Charles Wood of the Texas Parks and Wildlife Department, Trustee Program, 4200 Smith School Rd., Austin, Texas 78744, (512) 912-7155, or at charles.wood@tpwd.state.tx.us.

DATES: Comments must be submitted in writing within 30 days of the date of this publication to Charles Wood of the Texas Parks and Wildlife Department at the address listed in the previous paragraph. The Natural Resource Trustees will consider all written comments prior to finalizing the Draft DARP.

SUPPLEMENTARY INFORMATION: On Monday, November 3, 2003, a barge owned and operated by Echo Towing and carrying a cargo owned by Martin of approximately 235,000 gallons of concentrated sulfuric acid, capsized at the Sterling Chemicals Terminal and began leaking concentrated sulfuric acid into the Texas City Harbor and the Channel in Galveston Bay, Galveston County, Texas. The

Responsible Party, United States Coast Guard (USCG), United States Environmental Protection Agency (EPA), TCEQ, GLO, TPWD, the United States Fish and Wildlife Service (USFWS), and the National Oceanic and Atmospheric Administration (NOAA) responded to the threat of a large release of sulfuric acid into the navigable waters of the Channel.

On Wednesday, November 5th, 2003, during attempts to stabilize the capsized barge, the barge rolled again, further degrading its stability and allowing salt water to mix with the cargo. Because sulfuric acid reacts violently with salt water producing heat and hydrogen gas and at these concentrations corrodes metal, a significant potential for explosion from evolved gases within the cargo holds posed an imminent and substantial threat to public health and safety. These concerns dictated that attempts to gradually offload or regulate the discharge of the cargo be abandoned. Consequently, the remaining sulfuric acid was released directly into the Channel. Natural resources and associated services identified as lost or injured by the Natural Resource Trustees from monitoring, trawls and modeling included sub-tidal unvegetated soft-bottom benthic habitats, benthic organisms, finfish, and shellfish in the Channel.

Fisheries production losses estimated from the Natural Resource Damage Assessment Model for Coastal and Marine Environments assessment and results of a Habitat Equivalency Analysis (HEA) were used to determine the scale of the tidal marsh restoration project required to compensate for injured resources. Calculations indicate that each acre of constructed marsh would generate a total of 3,830,051.27 g of discounted fisheries production. Since 14,578,500 g of fisheries were estimated to be lost as a result of the Incident, 3.81 acres of marsh habitat would need to be created in order to compensate for the total lost biomass.

Using information from similar marsh construction projects, the Natural Resource Trustees estimate $45,263.00 per acre for costs necessary to create replacement marsh habitat. This results in project construction costs of $172,000.00. Based on past experience implementing and monitoring restoration projects, the Natural Resource Trustees estimated that $6,000.00 will be needed to cover administrative costs associated with this project. Therefore, restoration costs and uncompensated assessment costs total approximately $178,000.00.

The Natural Resource Trustees evaluated three proposed projects in the West Bay area and have concluded that the preferred restoration option is the construction of salt marsh in the southwest portion of the Galveston Bay system in the vicinity of Virginia Point, i.e., Swan Lake. This project will provide comparable ecological services to those injured, provide enhancement of those services immediately adjacent to the Channel, and offer additional ecological benefit similar to those injured from a larger restoration action already underway at the proposed restoration site. In addition, since this project would be implemented as part of a larger marsh restoration action, cost savings and increased chance of success from inclusion as part of a larger overall project improve the cost effectiveness and timely implementation of the restoration action. In the event that excess settlement funds remain following construction of this project, the Trustees will apply the remaining funds to a comparable restoration project in the Galveston Bay area.

TRD-200505219
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: November 10, 2005

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Public Utility Commission of Texas

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on November 14, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Southwestern Bell Telephone, LP, doing business as SBC Texas (SBC Texas), to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries of the Spring and Pinehurst Exchanges. Docket Number 32037.

The Application: This minor boundary amendment is being requested to update the common serving area boundary between SBC Texas's Spring and Pinehurst exchanges to accurately illustrate the way this boundary is being administered within Montgomery County, Texas.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by December 5, 2005, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32037.

TRD-200505304
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 16, 2005

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Notice of Application for Authority to Increase Fuel Factors

Notice is given to the public of an application to increase fuel factors filed with the Public Utility Commission of Texas (Commission) on November 7, 2005, pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §4.001 and §36.203 (Vernon 1998 & Supplement 2005).

Docket Style and Number: Application of Mutual Energy SPP for Authority to Increase Fuel Factors, Docket Number 32004.

The Application: On November 7, 2005, Mutual Energy SWEPCO d/b/a Mutual Energy SPP filed an application to adjust its seasonal fuel factors to reflect the forecasted changes in the market price of natural gas. Mutual Energy SPP seeks to increase its fuel factors based on fuel factor calculations utilizing "pre-Katrina" 12-month forward closing NYMEX rolling 10-day average forecasts ending August 26, 2005. The "pre-Katrina" forecasted average price for natural gas used in this application is $9.548/MMBtu, while forecasted natural gas market prices since Hurricane Katrina have exceeded $13.00/MMBtu. Mutual Energy SPP's filing is made in accordance with the methodology set forth in Docket Number 29331, using "pre-Katrina" gas prices. Mutual Energy SPP requests approval of its fuel factors, effective with the January 2006 billing cycles, beginning on December 30, 2005.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 32004.

TRD-200505218

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2005

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 7, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Pac-West Telecomm, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 32005 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ISDN, Optical Services, T1-Private line, Switch 56 KBPS, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 30, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32005.

TRD-200505215
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2005

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Notice of Application to Amend Designation as an Eligible Telecommunications Provider and Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 9, 2005, for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of DialToneServices, L.P. (DTS) to Amend its Designation as an Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. Substantive Rule §26.417, and as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 32024.

The Application: DTS company seeks to expand its area of service eligible for universal service support to include the entire study areas of the following eight rural incumbent local exchange companies: Border to Border Communications, Inc.; Dell Telephone Cooperative, Inc.; Alenco Communications, Inc., doing business as ACI; XIT Rural Telephone Cooperative, Inc.; Riviera Telephone Company, Inc.; Big Bend Telephone Company, Inc.; Valley Telephone Cooperative, Inc.; and West Texas Rural Telephone Cooperative, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 15, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32024.

TRD-200505237
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 14, 2005

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on November 14, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Southwestern Bell Telephone, L.P., doing business as SBC Texas' (SBC) request for additional numbering resources.

Docket Title and Number: Petition of Southwestern Bell Telephone, L.P., doing business as SBC Texas, for Waiver of Denial of Numbering Resources--Edinburg Rate Center. Docket Number 32035.

The Application: SBC submitted an application to the Pooling Administrator (PA) to provide it with additional numbering resources to satisfy the request of the Edinburg Regional Medical Center in Edinburg, Texas to meet their business needs.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 30, 2005. Hearing and Speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32035.

TRD-200505318
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 16, 2005

♦ ♦ ♦

Notice of Petition of the Electric Reliability Council of Texas for Approval of Amended and Restated Bylaws

On November 9, 2005, the Electric Reliability Council of Texas (ERCOT) filed with the Public Utility Commission of Texas (commission) a petition seeking approval of amended and restated bylaws.

Docket Style and Number: Petition of the Electric Reliability Council of Texas for Approval of Amended and Restated Bylaws, Docket Number 32025.

The Application: ERCOT, the Independent Organization of the ERCOT Region, hereby seeks approval of its Amended and Restated Bylaws approved by the ERCOT Board of Directors and the Corporate Members of ERCOT. ERCOT adopted these revised Amended and Restated Bylaws in response to recent revisions to the Public Utility Regulatory Act §39.151 adopted by the Texas Legislature in Senate Bill 408 (2005). In order for ERCOT to make its Amended and Restated Bylaws effective for 2006, ERCOT seeks commission approval no later than December 15, 2005.

ERCOT has posted a copy of its petition on its web site at http://www.ercot.com/Participants/Legal.htm. Interested parties may also access ERCOT's petition through the Public Utility Commission's web site at http://www.puc.state.tx.us under Docket Number 32025.

Initial written comments regarding the petition should be submitted by December 2, 2005, and reply comments by December 9, 2005, to the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. Comments should contain a concise position regarding the application, a concise statement of each question of fact, law, or policy. All comments should reference Docket Number 32025.

TRD-200505316

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 16, 2005

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Texas State University-San Marcos

Request for Proposals

Texas State University-San Marcos seeks a two-part proposal to enter into one or more contracts to conduct an independent review of a September 11th incident involving students and police that occurred on the campus and to conduct an assessment of the operations of the University Police Department. Each part of the proposal will be independent of the other with Texas State opting to conduct 1) part one: the independent review, 2) part two: the assessment or 3) both part one and two at the same time.

1.1 Part One

The September 11th incident involved students and other participants attending a party after the conclusion of the African American Leadership Conference. University and City of San Marcos Police were involved in dispersing participants from the parking garage which resulted in three arrests of Texas State students. A thorough review of the incident using generally accepted protocol and procedures for campus police agencies is requested resulting in independent written findings and recommendations.

1.2 Part Two

The second part of the proposal would be to conduct an Assessment of the University Police Department and follow through with a written plan outlining strengths and areas of improvement needed for the department based on generally accepted protocol and procedures for campus policing agencies.

1.3 Inclusions

The successful proposal should include the following:

1. A brief outline of the history and qualifications of the company. 2. The qualifications of the team member(s) who would be involved in part one and part two of the proposal. A diverse team is preferred with team members possessing a thorough knowledge and experience with policing policies and procedures. 3. The steps to be taken and the approach taken for each part of the requested proposal. 4. Provide evidence of experience in conducting investigations and/or assessments of a similar nature within the last five years and the scope of those investigations or assessments. 5. A timeline for completion of the investigation and/or assessment. 6. A list of at least three to five references for projects of a similar scope and nature including the name or the organization with whom contracted, name and telephone number of contact person and timeframe for project. 7. A proposed fee and payment schedule.

2.0 Evaluation Process and Award

2.1 Contractual Intent/Right to Terminate and Recommence RFP Process

The University intends to contract with one or more vendors whose proposal(s) are considered to be in the best interests of the University. However, the University may terminate this RFP process at any time up to notice of award, without prior notice, and without liability of any kind or amount. Further, the University reserves the right to commence one or more subsequent RFP processes seeking the same or similar products or services covered hereunder.

2.1.1 Effective Period of Proposals

Under this RFP, the University shall hold that vendors' responses to this RFP shall remain in effect for a minimum period of ninety (90) days following the closing date, in order to allow time for evaluation, approval, and award of contract. Any vendor who does not agree to this condition shall specifically communicate in its proposal such disagreement to the University, along with any proposed alternatives. The University may accept or reject such proposed alternatives without further notification or explanation.

2.1.2 Proposal Acceptance/Rejection

The University reserves the right to reject any or all proposals. Such rejection may be without prior notice and shall be without any liability of any kind or amount to the University. The University shall not accept any proposal that the University deems not to be in its best interests. The University shall reject proposals submitted after the closing date and time.

2.1.3 Errors and Omissions in Vendors Proposals

The University may accept or reject any vendor's proposal, in part or in its entirety, if such proposal contains errors, omissions, or other problematic information. The University, at its sole discretion, may decide upon the materiality of such errors, omissions, or other problematic information.

2.1.4 Determination of and Information Concerning Vendor's Qualifications

The University reserves the right to determine whether a vendor has the ability, capacity, and resources necessary to perform in full any contract resulting from this RFP. The University may request from vendors information it deems necessary to evaluate such vendors' qualifications and capacities to deliver the products and/or services sought hereunder. The University may reject any vendor's proposal for which such information has been requested but which the vendor has not provided. Such information may include but is not limited to:

* Financial resources

* Personnel resources

* Physical resources

* Internal financial, operating, quality assurance, and other similar controls and policies

* Resumes or key executives, officers, and other personnel pertinent to the requirements of the RFP

* Customer references

* Disclosures of complaints or pending actions, legal or otherwise, against the vendor

2.1.5 Apparently Conflicting Information Obtained by Vendor The University is under no obligation whatsoever to honor or observe any information that my apparently conflict with any provision herein, regardless of whether such information is obtained from any office, agent, or employee of the University. Such information shall not affect the vendor's risks or obligations under a contract resulting from the RFP.

2.1.6 Rejection of Vendor Counter-offers, Stipulations, and Other Exceptions

Any vendor exception, stipulation, counter-offer, requirement, and/or other alternative term or condition shall be considered rejected unless specifically accepted in writing by the University and thereafter incorporated into any contract resulting from this RFP.

2.1.7 Method of Award

The evaluation of each response to this RFP will be based on its overall competence, compliance, format and organization. The award shall be made to the responsible vendor whose proposal is determined to be the most advantageous to the University, taking into consideration the following evaluation criteria listed in the relative descending order of importance. Pricing may be a criterion. However, the University is under no obligation whatsoever to select as most responsive the proposal that demonstrates the lowest pricing but not necessarily the one receiving the highest overall score.

A selection committee will review the proposals and select the one proposal that is viewed to be most appropriate and "best value" for the university. Evaluation criteria will include, but is not limited to, the breadth of experience with these types of investigations, credentials and knowledge and experience with policing policies and procedures.

Vendors whose proposals are not accepted may be notified after a contractual agreement exists between the University and the selected proposer, or when the University rejects all proposals. However, the University reserves the right not to notify vendors whose RFP responses are not selected for further consideration or notice of award. If the University decides to notify such vendors in writing, it will send the notifications to the address indicated in each such vendor's proposal.

The contract will consist of the University RFP, the proposal with any and all revisions, award letter, and/or purchase order, and/or the signed agreement between the parties, as stated in that agreement.

2.1.8 Selection, Negotiation, Additional Information

Although the University reserves the right to negotiate with any vendor or vendors to arrive at its final decision and/or to request additional information or clarification on any matter included in the proposal, it also reserves the right to select the most responsive vendor or vendors without further discussion, negotiation, or prior notice. The University may presume that any proposal is a best-and-final offer.

2.1.9 Pre-Award Presentations

The University reserves the right to require presentations from the highest ranked vendors, in which they may be asked to provide information in addition to that provided in their proposals.

2.1.10 Pre-Award Negotiations

The University reserves the right to negotiate prior to award with the highest ranked vendors for the purpose of addressing the matters set forth in the following list, which may not be exhaustive.

* Resolving minor differences and scrivener's errors

* Clarifying necessary details and responsibilities

* Emphasizing important issues and points

* Receiving assurances from vendors

* Obtaining the lowest and best pricing and/or revenue agreement

2.1.11 Vendor's Need to Use Proprietary Rights of the University All information proprietary to the University and disclosed by the University to any vendor shall be held in confidence by the vendor and shall be used only for purposes of the vendor's performance under any contract resulting from this RFP.

2.1.12 Public Record

After the award and execution of a contract resulting from this RFP, vendors' proposals become public record and are available for review during the University's regular office hours. The University will, in good faith and to the extent allowed by law, honor any vendor information that is clearly designated and conspicuously labeled as proprietary. The University shall not be liable in any manner or in any amount for disclosing proprietary information if such information is not clearly so designated and conspicuously so labeled. The University shall likewise not be liable if it did not know or could not have reasonably known that such information was proprietary.

Proposals should be received in total on or before 4:30 pm on Wednesday, December 14, 2005 to:

Dr. Joanne H. Smith

Vice President for Student Affairs

J.C. Kellam Bldg, room 980

601 University Drive

San Marcos, Texas 78666

If mailed, proposals should be sent to:

Texas State University-San Marcos

Dr. Joanne H. Smith

601 University Drive

San Marcos, TX 78666

It is strongly recommended that sufficient time be allowed for transmitting a response to this RFP to assure receipt at the proper location prior to the published deadline. Failure to deliver rests solely with the responder. Questions regarding this request for proposals should be directed to Dr. Joanne H. Smith, at 512-245-2152 or js14@txstate.edu.

TRD-200505314
William A. Nance
Vice President for Finance and Support Services
Texas State University-San Marcos
Filed: November 16, 2005

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Texas Water Development Board

Request for Applications

The Texas Water Development Board (TWDB or Board) requests the submission of Request for Applications (RFAs) for state Fiscal Year 2006 to provide agricultural water conservation grants. The total amount of the solicited grants awarded by the TWDB shall not exceed $600,000 from the Agricultural Water Conservation Fund. Rules governing the Agricultural Water Conservation Fund (31 Texas Administrative Code, Chapter 367), guidelines, and instruction sheet are available upon request from the TWDB.

Description of the Objectives and Purpose. The TWDB's total grant contribution is estimated not to exceed the posted dollar value indicated. RFAs are requested for the following:

1) A grant (not to exceed a total of $250,000) to state agencies or political subdivisions for a statewide program to develop the curriculum and conduct irrigation water management training for agricultural producers to include such topics as characteristics of efficient irrigation systems, crop water use, soil moisture holding characteristics, irrigation scheduling, and other irrigation water conservation Best Management Practices.

2) A grant (not to exceed a total of $350,000) to state agencies or political subdivisions for a two or three year irrigation water conservation demonstration project to complement the existing two long-term Agricultural Water Conservation Demonstration Initiatives. The demonstration project should be outside the current demonstration areas and should emphasize measuring the economic impacts and irrigation water use savings of irrigation water conservation practices currently in use.

Description of Applicant Criteria. The applicable scope of work, schedule, and contract amount will be negotiated after the TWDB selects the most qualified applicants. Failure to arrive at mutually agreeable terms of a contract with the most qualified applicant shall constitute a rejection of the Board's offer and may result in subsequent negotiations with the next most qualified applicant. The TWDB reserves the right to reject any or all applications if staff determines that the application(s) does not adequately meet the required criteria or if the funding available is less than the requested funding.

Deadline for Submittal, Review Criteria and Contact Person for Additional Information. Ten double-sided, double-spaced copies of a completed application must be filed with the TWDB within 45 days of the publication of this RFA. Applications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, Room 531, 1700 North Congress Avenue, Austin, Texas, 78701; or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231. All applicants should obtain the TWDB's guidelines and instruction sheet for responding to the RFA. Requests for information should be directed to Mr. Comer Tuck at the preceding address, by calling (512) 936-2343, or by e-mail to comer.tuck@twdb.state.tx.us.

TRD-200505276
Ron Pigott
Attorney
Texas Water Development Board
Filed: November 15, 2005

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Request for Proposals

The Texas Water Development Board (TWDB) requests the submission of Request for Proposals (RFP) from interested applicants leading to the possible award of a contract for state Fiscal Year 2006 to conduct advanced analysis of the data submitted in fulfillment of the Water Audit reporting requirements. The total amount of the grant awarded by the TWDB shall not exceed $100,000 based on requirements of the grant contract between the Bureau of Reclamation (BOR) Water 2025 Challenge Grant Program and TWDB. Rules governing the Research and Planning Fund (31 Texas Administrative Code, Chapter 355) will be used and are available upon request from the TWDB, or may be found at the Secretary of State's Internet address: {http://www.sos.state.tx.us/tac/}; then sequentially select, "TAC Viewer," "Title 31," "Part 10," and "Chapter 355." Guidelines for responding to the RFP, which include an application form and detailed information on the research topic, will be available at the TWDB website at: {http://www.twdb.state.tx.us/publications/requestforproposals/requestsforproposals_index.htm}, or will be provided upon request.

Description of the Research Objectives and Purpose

This study should include advanced analysis of the data collected by TWDB from retail public water providers in fulfillment of the Water Audit reporting requirements, including:

***** Analysis of reported water loss data

***** Descriptive statistics of all reported data aggregated by:

****** geographic levels (state, regional water planning areas, "hot spots" as identified by the Bureau of Reclamation, and county); and

****** functional levels (utility type, size, etc.)

***** Geographic analysis, including ARCGIS layers, of descriptive statistics

***** Preparation of report to include charts, maps, graphs and comparative analysis of data

Contractor must provide all final materials in electronic format. Information on the water loss audit can be found on the TWDB website at: http://www.twdb.state.tx.us/assistance/conservation/Municipal/Water_Audit/HB3338.asp

Proposals should include an outline of the approach to completing the data analysis, work, and a timeline for task completion. **The final report should be completed by December 1, 2006.**

Description of Applicant Criteria

The applicant should (1) demonstrate prior experience in the priority research topic; (2) be able to review, research, analyze, evaluate, and interpret data and research findings; and (3) have excellent oral presentation and writing abilities. If necessary, the applicant should be prepared to make an oral presentation to TWDB staff. The final scope of work, schedule, and contract amount will be negotiated after the TWDB selects the most qualified applicant. Failure to reach a negotiated contract may result in subsequent negotiations with the next-most qualified applicant; however, a negotiation will not occur with applicants who are determined by the TWDB to be unqualified or otherwise unsuited to perform the requested research. Applicants selected to conduct the research may be required to present the results of their research at one or more of the TWDB's monthly public meetings.

Deadline for Submittal, Review Criteria and Contact Person for Additional Information

Historically Underutilized Businesses are encouraged to submit proposals and/or participate as subcontractors in the water research program. Ten double-sided, double-spaced copies of a completed proposal must be filed with the TWDB no later than 5:00 PM, January 24, 2006. Respondents to this request shall limit their proposal to the size previously mentioned, and should be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, Room 531, 1700 North Congress Avenue, Austin, Texas; or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711-3231. Requests for information and the TWDB's guidelines for responding to the RFP should be directed to Mr. John Sutton at the preceding address, by calling (512) 463-7988, or by e-mail to: John.Sutton@twdb.state.tx.us or the TWDB website at: www.twdb.state.tx.us.

TRD-200505275

Ron Pigott
Attorney
Texas Water Development Board
Filed: November 15, 2005

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Texas Workforce Commission

Resolution of the Texas Workforce Commission Establishing Unemployment Obligation Assessment for Calendar Year 2006

1. In accordance with the formula provided in 40 TAC §815.132 as set out in part in subsection (e):

"(e) The rate of the portion of the assessment that is to be used to pay a bond obligation is a percentage of the product of the unemployment obligation assessment ratio and the sum of the employer's prior year general tax rate, the replenishment tax rate and the deficit tax rate. The percentage to be determined by Commission resolution, shall not exceed 200%." The "percentage" for 2006 is 94%.

TRD-200505279
Don Ballard
General Counsel
Texas Workforce Commission
Filed: November 15, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).